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AND
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CONVEYANCER'S NOTEBOOK.

Marriages and members of the forces.—A short Act, Marriage (Members of His Majesty's Forces) Act, 1941, has been passed to avoid certain formal difficulties which arise from the transfers of members, both men and women, of His Majesty's forces and from alterations in their leave. The primary purposes are twofold: first, to enable marriages intended to be solemnised in one place to be celebrated in another, and secondly, to extend the time between banns and licence for the solemnisation of the marriage. The condition precedent to both these modifications is that one party should be a member of His Majesty's forces, which includes the women's services and the nursing services.

Under section 1 (1), if the marriage was to take place in England the party in the services must get a certificate from the appropriate officer, an officer commanding a ship, or not below the rank of major or squadron leader according to his branch of the service or the equivalent in the women's services, that owing to the exigencies of His Majesty's service the party cannot attend at the place where the marriage was to have been solemnised and that the appropriate authority has no reason to believe that the party is already married. On the strength of this the marriage can take place in any other building in England authorised for marriages or before a minister in Scotland or at the office of an authorised registrar in Scotland. Under sub-section (2), if the marriage was to take place in Scotland, on the grant of a similar certificate that the party cannot go to Scotland the marriage can take place in any building authorised for marriages in England.

Under section 2 the period of time between the completion of publication of banns, licence by archbishop or bishop, superintendent registrar in England or registrar in Scotland, and the date of marriage has been extended to one year from the date of licence, etc., provided that it takes place within the war period. The war period is defined by reference to the Emergency Powers (Defence) Act, 1939.

Under section 3 the Registrar General may authorise a superintendent registrar to issue a certificate of notice of marriage and licence on the same day, and section 4 amends section 1 (2) of the Marriage (Naval, Military and Air Force Chapels) Act, 1932, by substitution of women in the women's forces including the nursing services for women in the nursing services.

A certificate stating that a person named in the certificate is a member of His Majesty's forces for the purposes of the Act and the person signing the certificate is the appropriate authority is *conclusive* evidence for the purposes of the Act: section 5 (4).

The definition of members of His Majesty's forces in the Act may be varied by Order in Council: section 5 (6).

War damage—practice notes.—The War Damage Commission is to be congratulated upon the production of Practice Notes (H.M. Stationary Office, price sixpence) first series. These notes are designed for practitioners such as solicitors, architects, surveyors and builders. Unlike some productions of the civil service they do much more than state some rules governing administrative practice.

The pamphlet concerns damage to land under Part I of the War Damage Act. It begins by explaining the types of property to which this Part relates. The Act relates to land, and to some extent land is defined by the Act by the process of inclusion and exclusion, so for examples it excludes all trees and crops whether or not grown for food. The pamphlet then sets out certain tests for determining whether or not any particular item falls within the classification of land. As a matter of administration the Commission has come to certain decisions which appear to be summarised. With regard to one such decision at least we would wish to enter a caveat. It is admitted that "land" has received in certain particulars a different interpretation "depending on the nature of the question and the capacity in which the parties come before them", but the Commission proposes (see p. 4) to follow the law of rating where any such legal differences exist. This seems to apply the principles of taxation statutes to payments out

by the Treasury. On general principle we have doubts about the soundness of such a procedure, as indeed we have about the statement "the answer to the question [what is land in its ordinary meaning?] requires mainly the application of common sense". As an earnest student of our land law for many years the writer can only regard this as an optimistic conclusion.

Passing from this the pamphlet explains the classification of hereditaments (developed and undeveloped). From this it passes, and it is its main part, to the practical questions of payments, including costs of works, method of assessment and proper cost and the date of determination of kind of payment, with many others. It draws attention to the fact that rules for appeal to the High Court have been made: R. S. C., Order LVc (S. R. & O., 1941, No. 1719/L.31.

It would be impossible as well as out of place to go into all these practical matters here. No practitioner who is concerned with war damage to land should be without a copy of the pamphlet. With a return of the "raiding season" we fear lest it may become a "best seller".

In connection with war damage, attention is drawn to the letter from Mr. Hewett appearing elsewhere in this number. Superficially at least the decision of the Commission would appear to depend on the view that an agreement to assign would not be equivalent to an assignment. This in turn depends upon the character of property interest created by the right to a value payment. So long, however, as the Commission take the view they do it would appear necessary to insert special stipulations in the contract for sale.

Stamp duties on destroyed documents.—In the *Law Society's Gazette* for April 1942 (p. 36) are set out the result of communications between the Board of Inland Revenue and the Council of the Law Society. The position is briefly that where a destroyed document is replaced it will have to be stamped as a substitute according to the ordinary duty, *e.g.*, a confirmatory conveyance at ten shillings. On the other hand on proof that a document has already been stamped properly an allowance will be made by stamping for nothing a newly created document which is a replica or reproduction of that which was damaged or destroyed. These concessions are of course only for destruction by enemy action, and certain general conditions are imposed. These conditions include evidence

of loss by statutory declaration, undertaking to deliver up documents if recovered and in some cases an indemnity.

Further details are given in the *Law Society's Gazette*, but applications for allowances of stamps and requests for information should be addressed to the Controller of Stamps, Inland Revenue, Grand Hotel, Llandudno, Caernarvonshire.

"HOTCHPOT"
AT COMMON LAW, BY CUSTOM AND STATUTE, IN EQUITY AND THE PRACTICE OF CONVEYANCERS

(*concluded*).

By BERTRAM B. BENAS, B.A., LL.B., Barrister-at-Law.

It may be convenient before turning to some of the cases illustrative of the working of hotchpot to consider the general principles which the decisions of the Courts and the practice of conveyancers have established.

A hotchpot clause should be so framed as to be applicable to all who can take by appointment or in default thereof (see *Langslow* v. *Langslow*, 21 Beav. 522; *Hewitt* v. *Jardine*, 14 Eq. 58). It is applicable to life and reversionary interests as also to annuities which have been treated as advancements and their value accounted for (see *Rucker* v. *Scholefield*, 1 H. & M. 36; *Eales* v. *Drake*, 1 Ch. D. 217). If there is disagreement as to valuation, an inquiry at Chambers is the appropriate course to be taken (*Eales* v. *Drake*, *supra*, at p. 219). Where the question of hotchpot arises in settlements connected with each other or where the same settlement contains both an express and an implied or a referential hotchpot clause the following appears to be the law and practice: Each hotchpot clause is relative to the fund in its own deed (*Montague* v. *Montague*, 15 Beav. 565; *Lady V. Wellesley* v. *Mornington*, 1 Jur. (N.S.) 1202), but it is observed in 3 Davidson Prec. Conv., C. Davidson and J. Waley, 2nd ed., p. 127, that hotchpot clauses in separate instruments have not a cross operation and "where a settlement declares express trusts of one fund, and trusts by reference to the former of another fund, it is desirable that the hotchpot clause should exclude a child taking under an appointment from participating without account, in terms which apply not merely to the particular fund of which trusts are expressly declared, but to all the settled property, so as clearly

to give to the express and implied hotchpot clauses a cross operation over the respective funds devolving in default of appointment". See also *Re Marquis of Bristol*, [1897] 1 Ch. 946; *Re Cavendish*, [1912] 1 Ch. 794; *Re Marke Wood*, [1913] 2 Ch. 574. There may, however, arise a case where there is a manifest paramount intention that a hotchpot clause shall be applicable to all settled funds. (See, *e.g.*, *Re Perkins*, 41 W. R. 170.) Where a settlement contained a power of appointment in favour of children but no hotchpot clause in respect of participation of appointees in unappointed funds, and also contained a power of advancement, money paid was held to be an advancement, and not an appointment, and brought into hotchpot, the power providing that "sums advanced to be taken as part satisfaction of such child's share" (*Re Gosset's Settlement*, 19 Beav. 529). As to the application of a hotchpot clause of a will to distribution of residue in respect of advances made during the lifetime and after the death of the testator, and to income applied after his death for maintenance and education, see *Hilton* v. *Hilton*, 14 Eq. 468; *Smith* v. *Conder*, 9 Ch. D. 170; and *Stewart* v. *Stewart*, 15 Ch. D. 539, and the latter case in respect of a lapsed share of residue. As the principle of hotchpot is the presumed intention of the testator to effect an equal distribution between his children, there will be no hotchpot application in order to increase the share of an object of the testator's bounty other than his children. (See *Meinertzhagen* v. *Walters*, 7 Ch. 670; *Re Heather*, [1906] 2 Ch. 230.)

Advancement has been described as an anticipatory payment on account (see *Re Aldridge*, 55 L. T. 554, at p. 556), and must be differentiated as between advancement in the form of gift on the one hand and of loan on the other. (See *Re Dallmeyer*, [1896] 1 Ch. 372, at p. 391; *Re Warde*, 111 L. T. 35; *Re Trollope*, [1915] 1 Ch. 853; *Re Barker*, [1918] 1 Ch. 128.) "A portion does not include allowances out of income . . . small gifts such as a testator may be reasonably supposed to give to his children, but it does include sums given to children by way of advancement, or settled on their marriages and other sums which in the ordinary sense of the word are considered as having been paid as permanent provision for the child" (*Re Willoughby*, [1911] 2 Ch. 581, at p. 590). There is no presumption that the payment of a sum of money to a child before the date of the will is to go against a legacy bequeathed by the will to that child, in other words, an actually advanced portion in such a case gives rise to no presumption of hotchpot (see *Taylor* v. *Cartwright*, 14 Eq. 167, at p. 176, and *Re Dallmeyer*, *supra*, at p. 392). Where a testator covenants on the marriage of a child to settle a definite amount

and thereafter makes that child a beneficiary under his will without reference to any portion covenanted prior thereto to be given to that child, there will be a presumption (capable of rebuttal) that the covenanted portion is to be brought, *pro tanto* or *in toto*, into hotchpot in relation to the gift under the will. "The rules laid down in the authorities for working out the consequences of a common hotchpot clause are, first, that no interest is charged against an advanced child prior to the testator's death; secondly, that where the period of distribution of the testator's property is at the testator's death, interest is charged against an advanced child from the death, and not from the subsequent date at which, in fact, the distribution takes place; thirdly, that if the period of distribution is at the expiration of a period of accumulation or of a prior life estate, interest is charged not from the death, but from the period of distribution; and fourthly, that the effect of a charge upon the residue, such as a life annuity secured by a fund set apart to meet it, does not alter the period of distribution" (*per* Cozens-Hardy, M.R., in *Re Willoughby*, [1911] 2 Ch. 581).

In *Re Hargreaves*, 88 L. T. 100, residue subject to an annuity was given to six children, the shares were settled, and advances were directed to be brought into hotchpot. To effect adjustment of the share of each of such beneficiaries, the advances were added to residue and on ascertainment of the share the income was divided proportionately to the value of the shares, the income of each of such beneficiaries being charged with one-sixth of the annuity. The principle of the method of computation in *Re Hargreaves* is explained in *Re Cooke*, [1916] 1 Ch. 480, at p. 488, and *Re Mansel*, [1930] 1 Ch. 352. It rests on the footing that the time for ascertainment of the precise amount of capital to which each beneficiary, whether advanced or unadvanced, is entitled is the death of the testator and the adjustment of the income from the period of distribution (that is, the time fixed by the testator for the distribution of the estate) follows in the same proportions.

The method propounded in *Re Hargreaves* (*supra*) was followed in *Re Mansel* (*supra*), *Re Gilbert*, [1908] W. N. 63, and *Re Hart*, 107 L. T. 757. It was not followed in *Re Poyser*, [1908] 1 Ch. 828; *Re Craven*, [1914] 1 Ch. 358; *Re Forster-Brown*, [1914] 2 Ch. 584; *Re Cooke* (*supra*), and *Re Tod*, [1916] 1 Ch. 567. (See generally hereon the article on "Interest on Hotchpot Advances", 31 L. Q. R. p. 314, by the late Walter Strachan, and 32 L. Q. R., p. 348. The working out is a matter of accountancy technique (*a*),

(*a*) See the article by F. Graham Glover entitled "Hotchpot—a Question of Accounting", The Conveyancer (old series), Vol. XVIII, pp. 115 and 124, and the article "Hotchpot", *ibid.*, Vol. XXI, p. 101.

and, as the article suggests, other methods may in certain circumstances, be more appropriate and convenient.) In the absence of other directions by the testator or of the application of the method propounded in *Re Hargreaves* (*supra*), the interest debited against the child upon advances made by the testator during his life or made by the trustee of the will in pursuance of a power of advancement contained therein is debited from the period of distribution and not from the time of the advance, bearing in mind that such interest is merely for the purposes of accounting in making the adjustment necessary. (See *Re Dallmeyer* (*supra*), at p. 393; *Re Whiteford*, [1903] 1 Ch. 889, at p. 894; *Re Hargreaves*, 86 L. T. 43, at p. 45; and *Re Rees*, 17 Ch. D. 701, at p. 704; see also *Re Willoughby* (*supra*), at p. 600.) Interest, however, on advancement made after the period of distribution is payable only as from the date of advancement. (See *Re Lambert*, [1897] 2 Ch. 169.)

For the purposes of hotchpot the value of an appointed share where there is a prior life interest is generally to be assessed as at the death of the beneficiary for life. (See *Re Willoughby* (*supra*), at p. 595). The criterion of valuation is the "state of facts and contingencies at the time when the life interest or reversion is brought into hotchpot" (*Re West*, [1921] 1 Ch. 533, at p. 542; see also *Re Kelly's Settlement Trusts*, [1910] 1 Ch. 78). *Re West* was cited in the recent case of *Re Gordon*, [1942] 1 All E. R. 59, by Uthwatt, J., in the course of his judgment, citing the passages by Astbury, J., in the former case referring to *Eales* v. *Drake* (*supra*) and the *dictum* therein of Jessel, M.R., and the passage in relation thereto contained in *Jarman on Wills* (6th ed.) p. 1180. In *Re Gordon* (*b*) a testator gave each of his children a life interest in a share of residue and a power to appoint amongst issue and in default thereof he gave the share of each child to the child or children of that child. Any grandchild who or whose issue took any interest in default of appointment was to bring into hotchpot and account accordingly for any share or interest appointed under the above power. The facts were that one child appointed a third share of his share to each of his two daughters for life, with remainder to their children who should attain twenty-one or being female marry thereunder and in default of any such children for such persons as the daughters might by will appoint. The remaining third share passed in default of appointment. As to the extent of the interest which the daughters had to bring into hotchpot, Uthwatt, J., held that though it was unlikely, com-

(*b*) See "Notes of Recent Cases", *supra*, p. 208.

mercially speaking, that the daughters' shares would not go on their death either to the issue or to the persons to whom they appointed by will, such a possibility could not be excluded, and the daughters had to bring into hotchpot only their life interests in their third shares, and not the whole of those third shares.

In *Re Gunther's Will Trusts*, [1939] Ch. 985, a testator gave his residuary estate for division, and the shares to be held on certain trusts, and he directed that in the division certain sums advanced by him in his life to the residuary legatees should be brought into hotchpot. Farwell, J., held that the valuation of the estate for the purposes of the division should be made as at the death of the testator. The will contained no indication of his intentions in respect of the time for valuation. The observations of the learned Judge showed that he regarded no principle as being involved, that it was a matter of convenience, and the valuation was for capital purposes only. It was desirable that a date should be determined upon which was in no way dependent upon the energies of the executors in administration. The view is held that this case imposes no obligation upon executors to follow the method in all cases, and in the absence of expressed intention to the contrary the executors may well adopt the present practice of valuation as at the date of distribution. In *Re Wills*, [1939] 2 Ch. 705, the question was whether beneficiaries entitled to a share of the residue and who had been directed to bring into hotchpot advances made by the testator during his life should account for interest thereon as well as for the capital. Simonds, J., followed *Re Poyser* (*supra*) distinguishing *Re Hargreaves* (*supra*) and not following *Re Mansel* (*supra*). There was no contrary provision in the will, and the learned Judge directed that the advanced beneficiaries should be charged with interest at 4 per cent. on their advances as from the death of the testator, the amount of the advances to be assessed at the value of the securities advanced as at the date of the advances. This is a reversion to the practice obtaining prior to *Re Hargreaves* (*supra*). Simonds, J., regarded the method in *Re Hargreaves* as specifically referable to the particular will, while Farwell, J., in *Re Mansel* (*supra*) regarded the method in *Re Hargreaves* as generally applicable, in the absence of intention expressed in the will or other circumstances rendering the method inappropriate. In considering the state of the authorities at present, reference may usefully be made to the judgment of Farwell, J., in *Re Mansel* where the decisions to the date of the case were reviewed, and the survey is carried on by Simonds, J., in *Re Wills* where the reports show the wide range of authorities cited in argument and judgment.

The present position is by no means definitive and there is a considerable margin for prudence on the part of personal representatives in choosing the appropriate methods in each particular case. The conveyancer, in settling wills, is therefore well advised to consider the advantages to be obtained by express directions in that behalf, and some helpful formulæ by Sir Lancelot Elphinstone are contained in the *Conveyancers' Year Book for 1940*.

The principle of Hotchpot has found its way into the relationship of surety and co-surety. If a surety obtains a security against his liability from the principal debtor and calls for contribution from his co-surety or co-sureties, he must bring into hotchpot that security for the benefit of the co-surety or co-sureties. A security thus obtained by one co-surety enures for the benefit of the other co-surety or co-sureties until it is exhausted or recoupment has been made in respect thereof. This is the case even if the surety agreed only upon condition of receiving such security and even if the co-surety or co-sureties, on becoming such, were unaware that the surety had so agreed (see generally *Steel* v. *Dixon*, 17 Ch. D. 825, and *Berridge* v. *Berridge*, 44 Ch. D. 168). Shortly stated, the rule is that all co-sureties are entitled to the benefit of any security which any one of them has obtained from the principal debtor. This rule attracts to itself the method of hotchpot to secure its application in practice.

The law relating to Hotchpot offers a good illustration of the range of the working of the English legal system. Part of ancient local customary law, through coparcenary it found its way into the common law (2 Bl. Comm. 517). Its next stage of development was statutory (*ibid.*, 516), and the practice of conveyancers ultimately associated it with the principles of Equity, but perhaps its quintessential characteristic is most clearly found in the application of an equitable principle to a sphere of commercial law, the principle of contribution between sureties, for, as observed in *Re Willoughby* (*supra*, at p. 600), "Hotchpot implies equality", and as the maxim expresses it, "Equality is Equity".

CLEARANCE AREA: DEMOLITION BY HOUSING AUTHORITY PRIOR TO ACQUISITION.

By T. SOPHIAN.

The recent decision of the Court of Appeal in *Johnson* v. *Hastings Corporation* (so far unreported) raised a number of important points under the Housing Acts and the Lands Clauses, etc., Act, 1845, on which there is apparently no previous authority.

Under section 145 (1) of the Housing Act, 1936, which replaces the earlier provision in section 106 of the Housing Act, 1925, a housing authority who have made a compulsory purchase order which has become effective, are entitled, after serving a notice to treat, and notice of their intention to enter and take possession, and after expiry of the notice, to "enter on and take possession of the land . . . without previous consent or compliance with sections 84 to 90 of the Lands Clauses Consolidation Act, 1845".

Under section 85 of the Lands Clauses Act an authority are entitled, prior to purchase, to "*enter upon and use*" the land, provided that they first make deposit by way of security and give a bond.

Under the Housing Act, however, a housing authority who are desirous of "entering on and taking possession" of the land which is being compulsorily acquired, may do so after notice to treat, merely by service of a notice of entry, and without the necessity of complying with the formalities that would otherwise be required of giving security and entering into a bond.

In *Johnson* v. *Hastings Corporation* the authority who had already given a valid notice of entry, later gave a subsequent notice of entry, and issued a warrant for possession to the sheriff under section 91 of the Lands Clauses Act, 1845, based on the second notice of entry, and the question raised was whether the possession obtained by the corporation in the circumstances could be regarded as lawful.

The Court held that the corporation had lawfully obtained possession notwithstanding that the corporation had issued a second notice of entry and had based their warrant on such second notice.

One of the arguments made on behalf of the plaintiff in relation to this point was that even on the assumption that the first notice was valid throughout, the second notice was a nullity, and as the warrant was based on the second and not the first notice, the warrant was also a nullity, and the eviction of the plaintiff which was effected by execution of the warrant constituted a trespass

accordingly. These objections were, however, overruled and the authority were held to have lawfully entered in the circumstances.

In arriving at this decision, the Court, it appears, was of the opinion that as the first notice of entry was valid and conferred on the authority a right to possession, the fact that the warrant referred to the second notice did not affect that right or the validity of the warrant itself.

But a further point of perhaps even greater importance was raised in the above case.

This point was as to whether the housing authority were entitled to demolish the building on the site before the ownership in the property had vested in them.

Section 30 of the Housing Act, 1936, imposes an obligation on an authority "who have purchased . . . land comprised in, or surrounded by, or adjoining, a clearance area", to cause every building thereon to be vacated, and to deal with that land, *inter alia*, by demolishing every building thereon before the expiration of six weeks from the date on which it is vacated, or before the expiration of such longer period as in the circumstances they deem reasonable.

Prima facie, therefore, the obligation imposed by section 30 is imposed only on an authority who has actually purchased the property.

But the corporation in *Johnson's Case* contended that their entry pursuant to the notice of entry, coupled with the incorporation of the provisions of the Lands Clauses Act, including sections 84—90 of that Act, in the compulsory purchase order, entitled them, upon compliance with the requirements of section 145 of the Housing Act, 1936 (*i.e.*, the service of notice to treat and notice of entry) to enter and permanently use the plaintiff's property for the purpose of effecting the clearance of the area, and for that purpose to demolish the building thereon.

It is quite true that the exercise of powers by an acquiring authority under section 85 of the Lands Clauses Act, 1845, entitles such authority to enter and make permanent use of the property upon giving security and entering into a bond. But the material words of section 85 are "enter upon and *use*", whereas the material words in section 145 (1) of the Housing Act, 1936, are "enter on and *take possession*".

The Court in *Johnson's Case*, however, considered that to "take possession" in section 145 of the Housing Act, 1936, conferred the same rights as did the expression "to use" in section 85 of the Lands Clauses Act, 1845, since it was held that the corporation's right to demolish was derived from the Compulsory Purchase Order

and the consequent incorporation therein of the above provisions of the Lands Clauses Act, 1845.

One further point of importance in the above case raised the question whether the corporation were precluded from exercising their compulsory purchase powers further, once the three-year limit imposed by s. 123 of the Lands Clauses Act, 1845, had expired. In *R.* v. *Webster, ex p. Marshall* (1931), 95 J. P. 226, a decision given under section 40 (41) of the Housing Act, 1925, it was held that it was necessary to acquire the land within three years and that the fact that notice to treat had been given within the three years was not itself sufficient. The wording of section 40 (4) of that Act (since repealed by the Housing Act, 1930) is expressly to the effect that the acquisition must take place within the three years, and that decision accordingly does not affect the construction of the provisions as to compulsory purchase in the 1930 Housing Act or the consolidating Act of 1936. The Court of Appeal accordingly applied the decision of the House of Lords in *Tiverton* v. *Loosemore*, 9 App. Cas. 480, to the facts in *Johnson's Case*.

The fact that the corporation prior to the expiry of the three-year period laid down in section 123 of the Lands Clauses Act, 1845, had merely served notice to treat and notice of entry, but had not entered or demolished, was held not to have precluded them from entering and demolishing the property subsequently to the expiry of the three-year period.

THE LANDLORD AND TENANT (REQUISITIONED LAND) ACT, 1942.

By B. A. BICKNELL, Barrister-at-Law.

In July, 1941, Mr. John W. Morris, K.C., was appointed to investigate the numerous complaints made about the requisitioning of land and buildings. His report (Cmd. 6313, price 6d.) was published in September, 1941. The complaints he dealt with ranged over a wide field. Tenants whose property had been requisitioned were the class which presented most detailed and specific criticism of the working of the requisitioning powers. The other principal complaints were concerned with the nature of the property requisitioned, the amount and manner of payment of compensation, delays in payment and the vexatious and high-handed manner adopted by the officials doing the actual requisi-

tioning. Mr. John W. Morris, K.C., after considering all these criticisms in detail, made only two recommendations, both intended to solve the difficulties of two small classes of tenants who, he thought, were especially injured by the exercise of requisitioning powers.

These recommendations were that tenants living in dwelling-houses or in full occupation of business premises, if they were dispossessed by requisitioning, should be given an option to disclaim their leases and secondly that, where tenants were paying inclusive rents not computed on the basis laid down in the Compensation (Defence) Act, 1939, machinery should be devised for arriving at the net rents payable by such tenants and relieving them of their obligations to pay more to their landlords. The Landlord and Tenant (Requisitioned Land) Act, 1942, gives effect to these recommendations.

Tenants whose land is requisitioned feel aggrieved in many cases because they receive as compensation rent sums which are less than the rents payable by them under their leases. The Compensation (Defence) Act, 1939, s. 2 (1), provides that the compensation rent payable shall be assessed on the basis of " (a) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained in the exercise of emergency powers, under a lease granted immediately before the beginning of that period, whereby the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent ". Proviso (i) reads: " in computing for the purposes of paragraph (a) of this sub-section the rent which might reasonably be expected to be payable . . . no account shall be taken of any appreciation of values due to the emergency ".

It thus happens that, if there has been a fall in letting values in the district in question, the compensation rent is fixed at an amount lower than the contractual rent. If a tenant being in occupation is dispossessed, he has the inconvenience of finding other premises while receiving less than the amount he has to pay his landlord. Again, where the tenant is paying a rent inclusive of rates and services, the landlord may claim his full rent, although the requisitioning authority pays a rent which does not include rates or services and the landlord is no longer called on to supply them. It is these two grievances which the new Act has endeavoured to remedy, the remedy being contained in some fifteen sections occupying fourteen pages of the Statute book.

The Profession will not find the new Act difficult to understand, as it follows the lines of the Landlord and Tenant (War Damage) Act, 1939. There is, however, a considerable difference in the scope of the two Acts. The Act of 1939 applies to all landlords and tenants where there is war damage. The Act of 1942 only gives relief to a limited class of tenants whose property is requisitioned.

The Act of 1942 has four main objects. The first and principal is to confer on tenants a power of disclaimer where the demised premises are requisitioned. For this power to be exercisable the lease has to be one to which the Act applies, and the tenant has to fulfil certain other conditions.

Section 11 provides that: "This Act, so far as it relates to the disclaimer of leases, shall only apply to a lease which: (a) provides that the term created thereby will expire, or may be determined, at a date not later than five years after the material date; or (b) provides (whatever form of words may be used) that the term created thereby will expire, or may be determined, at the end, or not later than twelve months after the end, of any war in which His Majesty may be engaged." Thus all leases having more than five years to run are wholly excluded from the power of disclaimer.

Where a lease falls within section 11 it may be disclaimed by the tenant if the requirements of section 1 are fulfilled. Section 1 provides: "Where possession of all the land comprised in a lease to which this Act applies has been taken on behalf of His Majesty in the exercise of emergency powers, and the land or the main part thereof was, immediately before possession was so taken, being used by the tenant or by a member of the tenant's family as his residence, or for the purposes of his business, or partly as his residence and partly for the purposes of his business, the tenant may, within three months from the material date, serve on the landlord a notice (in this Act referred to as a "notice of disclaimer") stating that he disclaims the lease: Provided that a notice of disclaimer shall not be served unless at the time when it is served possession of the land to which it relates is retained in the exercise of emergency powers."

Section 1 gives a tenant a power to disclaim which he can exercise without the leave of the Court. For the power to be exercised the four conditions laid down in sub-section (1) must all be fulfilled. The Act proceeds to explain further the second and third of these. Under sub-section (2) of section 1 land is not to be deemed to be used as a residence, if it is only used for a week-end or holiday residence or for occasional visits. It is not to be deemed to be used for the purposes of a business, where

the business has been wholly or mainly closed down or transferred to other premises and the land is only being used as a business address, or to store furniture or plant or for some purpose not involving the substantial use of the land.

The material date within three months of which a notice of disclaimer must be served is defined in section 13 (1) as meaning, where possession was taken before the passing of the Act, the date of the passing of the Act, that is March 26, 1942, in any other case, the date on which the land or part of the land was taken. The effect of this restriction as to time means that tenants whose properties were requisitioned before March 26 have only until June 26 in which to take advantage of the Act.

When a notice of disclaimer has been served, sub-section (3) of section 1 gives to the landlord the right at any time within one month from the service of the notice to apply to the Court to determine whether the notice is of no effect on the ground that the conditions in sub-section (1) have not been complied with. Where such an application is made, the onus is on the tenant of showing that the conditions have been fulfilled. It is to be observed that it is only if the requirements of sub-section (1) are not fulfilled that the landlord can take any steps to make the tenant retain the tenancy. There are no provisions, as in the case of land suffering war damage, under which the landlord can make the tenant retain the lease, payment of the rent being suspended. This omission is necessary, as the Act only applies to leases having a short period to run and it was thought it would be unjust to saddle a tenant, who had been turned out of his premises, with the fag-end of a lease, when he had probably had to find other premises and incur new obligations for rent.

Where only part of the land comprised in the lease is requisitioned the tenant cannot serve a notice of disclaimer but he may apply to the Court for leave to do so. The Act envisages three sets of circumstances in which such an application may be made and deals with each separately. In each case the tenant's application must be made within three months from the " material date ".

The first case provided for by section 1 (4) is where part of the land only is taken or only part is retained. In this case the tenant may apply for leave to serve notice of disclaimer if the other conditions of sub-section (1) are fulfilled. In considering such an application the Court has (*inter alia*) to have regard to whether it is reasonably practicable for the occupier to use the part of the land which has not been taken or retained as a residence or for his business. This meets the case, which arises with some

frequency, of the requisition of a dwelling-house but not of the land which is held with it.

Secondly, the land may be requisitioned by stages. This state of affairs is dealt with by section 4. The short effect of this section is to give to the tenant power to apply to the Court for leave to serve notice of disclaimer within three months from the date which is the material date in relation to any subsequent requisition.

The third case is that of our old friend the multiple lease, that is, a lease comprising land " used or adapted for use as two or more separate tenements ". This is provided for by section 3. Here, if all the land is taken, sub-section (1) of section 1 applies and the tenant can disclaim the entirety. Where only part is taken, the Court may give him leave to serve notice of disclaimer in respect of the whole of the land or one or more only of the separate tenements. Where leave to disclaim one or more of the tenements is given the Court has power to give consequential directions as to the apportionment of the rent. It is only where the lease is a multiple lease that the Court has power to allow disclaimer of a part of the premises.

Under section 2 (1) a notice of disclaimer becomes effective at the expiration of one month from service, or, if the landlord has applied to the Court under sub-section (3) of section 1, at the expiration of such further period as the Court allows. Under sub-section (2) of section 2 where a notice has become effective the disclaimed lease is deemed to have been surrendered as from the material date and all interests derived out of it are deemed to have been extinguished from that date. Under section 6 (1) the rent is apportionable on any surrender. Under sub-section (2) compensation payable in respect of any period after the surrender is payable to the landlord. However, until the landlord has given notice to the requisitioning authority, any compensation paid to the tenant is deemed to have been paid to him as agent of the landlord.

The only persons who can, in the circumstances provided for by the Act, derive title under a tenant who disclaims are mortgagees. Their interests are provided for in sub-sections (4) and (5) of section 2. Sub-section (5) imposes an obligation on a tenant who disclaims within seven days from the service of the notice of disclaimer to serve on any person having a mortgage on the term a copy of the notice of disclaimer and the name and address of the landlord. A tenant who fails to do this is liable to make good any damage suffered by reason of his failure. Sub-section (4) (a) then confers power on the Court, on the application of the mortgagee, to vest the lease in him.

Sub-section (4) (b) and (c) of section 2 gives power to the Court,

where there has been a disclaimer, on the application of the landlord or tenant to modify any obligation to repair and in particular to require a tenant to pay a sum in respect of dilapidations. The Court may also modify any term in the lease imposing any liability which takes effect on the surrender. These provisions will enable the Court to adjust equitably the obligations of the lease where it is determined. It is to be observed that its determination by disclaimer does not relieve a tenant of obligations which have accrued in respect of dilapidations and repairs and in default of agreement or an order of the Court under this section the tenant will remain liable for these.

Section 5 contains provisions intended to protect tenants who are outside the United Kingdom for the greater part of the three months from the material date. The Court may extend the period for the exercise of the tenant's rights and it may also, where it is not reasonably practicable to obtain instructions from the tenant, on the application of another proper person direct that the powers be exercised by such applicant on behalf of the tenant. This section is an attempt to meet the difficulty of protecting the interests of persons abroad. They will apply more especially to persons on war service and prisoners of war. It is rightly felt that their interests should be protected, but not infrequently there is no person legally entitled to act for them. This section provides a way out of the difficulty and its operation should be watched, for if it works well similar powers might be given to the Court to meet cases of the same kind in other matters. It seems hard, however, that no similar protection is given to landlords. Their interests may be jeopardised by a wrongly-served notice and it would seem that the time for applying to the Court under sub-section (3) of section 1 should also be extended for their benefit.

The second matter dealt with by the Act is the adjustment of the rights of landlords and tenants in respect of any building or fixture which a tenant has a right as between himself and his landlord to remove. Section 7 contains the provisions on this subject. It does two things, both intended to help tenants. First, if the lease comes to an end before possession is given up by the requisitioning authority or within such a short period as not to give the tenant a reasonable opportunity of exercising his right of removal, that right may be exercised within a reasonable time of possession being given up. If the tenant serves a notice on the person who, when possession is given up, will be entitled to occupy the land, requesting to be informed when possession is given up, such information must be supplied to the tenant: sub-section (4).

Secondly, under sub-section (3) of section 7 the tenant may

recover from the person entitled to the compensation payable in respect of the land such part of the compensation attributable to the use of any such building or fixtures and any compensation for damage to them.

Section 8 contains the provisions relating to the third and fourth matters dealt with by the Act, namely, the reduction of rents and the provision of services by landlords.

The provisions of the section apply to all leases, not only to leases having a short term to run and whether the whole or only part of the demised property is requisitioned: sub-section (4). They come into operation automatically without the service of any notices.

The section first provides machinery for relieving tenants of part of their rent. Under sub-section (1) where the tenant of requisitioned property is by the lease (a) relieved of liability in respect of the usual tenant's rates and taxes or the cost of repairs and insurances; or (b) the landlord is required to provide lighting, heating or other services; or (c) the landlord is required to carry out improvements which have not been completed, the rent payable under the lease in respect of the period for which possession is retained under emergency powers is to be reduced to such an amount as may be agreed by the tenant and landlord or, in default of agreement, determined by the Court to be the net amount which might reasonably have been expected to be payable on the assumption that the tenant was wholly liable in respect of all the matters in (a) and the landlord was not required to provide the services or to do the improvements.

Secondly, the section provides in the event of the requisitioning authority requiring the landlord's services to be continued for the landlord to continue to supply such services either under an arrangement directly with the authority (sub-section (2)) or by agreement between the authority, the landlord and the tenant: sub-section (3).

Such are the main provisions of the Act. It affords relief to those classes of tenants on whom requisitioning bears most hardly, but whether it is more than an interim measure time will show. Many tenants outside its scope are complaining vigorously of the burden imposed on them by the exercise of the emergency power of requisitioning land and they may press also for relief.

What is immediately important is to remember that the power of disclaimer conferred in respect of premises requisitioned before March 26, 1942, when the Act was passed, must be exercised before June 26, 1942. Forms of notices under the Act are to be found

post, p. 401. The manner of service of notices is governed by section 9 and is similar to the provisions in the Landlord and Tenant (War Damage) Act, 1939, dealing with the service of notices.

REPAIRS AND RECONSTRUCTION WITHIN THE HOUSING ACT WITH SPECIAL REFERENCE TO FIDUCIARY OWNERS.

By Alfred Wilson, Solicitor, Retford.

The powers conferred upon a local authority by sections 9 and 11 of the Housing Act, 1936, are very extensive and can be very drastic. Section 2 of the said Act provides that independently of any contract the landlord of a small house or cottage let at an annual rental of £40 or less in London or £26 or less in the provinces shall keep the same in all respects reasonably fit for human habitation. Section 9 of the Housing Act provides a means whereby repairs to a small tenement may be enforced if the anticipated cost is reasonable, whilst section 11 of the same Act deals with cases where mere repairs are almost out of the question owing to the cost not being likely to be at all reasonable. Under section 11 the prospect of demolition comes into view, but under section 9 the local authority may on default of the owner do the repairs and charge the costs against the landlord or obtain a charge upon the property itself. It will be noticed that the reference to section 11 in the arrangement of sections preceding the script of the Act itself and also in the marginal note in the script relates to insanitary houses and not to houses unfit for human habitation. The Act gives the procedure which must be adopted before the demolition of a property may take place and incidentally states that formal notices must be served upon the owner and other persons having an interest in the property. Under certain circumstances the property owner can save demolition if he gives certain undertakings providing for the future user of the premises or agrees to do such repairs as the local authority considers to be sufficient to make them fit for human habitation.

Section 188 of the said Act defines the owner as the person entitled to dispose of the fee simple (other than a mortgagee not in possession) or a lessee, and this, of course, includes trustees for sale and persons entitled to a life interest. The same section

defines the meaning of sanitary defects as used in the Act as including lack of air space, lack of ventilation, darkness, dampness, absence of a proper water supply or sanitary accommodation or other conveniences and inadequate paving or drainage of courts, yards or passages.

In fact, the Act places upon the property owner of working-class dwellings very great responsibility and whilst explaining in detail what the local councils may do, it gives very little guide as to how the costs of requisite repair and reconstruction schemes are to be met. If the owner is prepared to give such an undertaking as is suggested in section 11 then the cost in most cases can be provided by the property owner footing the bill, but where the person responsible is a limited owner or one in a fiduciary position such as a personal representative or a trustee then the position is not so simple.

Usually a costly scheme is necessitated to satisfy an authority with big ideas as to what is necessary to bring working-class houses up to a proper standard, and the tenants usually have a rooted objection to provide even part of the requisite finance. Tenants now protected by the Rent Acts are in a strong position, and by virtue of section 2 (1) (a) of the Increase, etc., of Rent Act, 1920, and section 7 of the 1933 Act only eight per cent. on the amount expended on improvements, structural alterations, additional fixtures and fittings (not including decoration and repairs) can be added to the rent ordinarily payable and even then formal notices of increase have to be served (*a*).

It seems to the writer that the Housing Act should have contained clauses exactly defining the powers of a trustee or limited owner in more detail and some detailed provision should have been inserted therein enabling costs of carrying out such an undertaking as aforesaid to be met by a simple mortgage or charge on the freehold. Paragraph (iii) of sub-section 1 of section 73 in Part III of the S. L. Act, 1925, authorises capital moneys arising under the Act to be used for the purpose of paying for any improvements authorised by the Act. Paragraph (ii) of sub-section (1) of section 7 enables a tenant for life to raise money on legal mortgage to pay for any improvement authorised by the Act and the money so raised shall be deemed to be capital money for that purpose. Section 83 of the S. L. Act states that the works mentioned in or any works for any purpose mentioned in the Third Schedule are authorised improvements. Paragraph (xxiii) of Part I of the Third Schedule includes additions to or alterations in buildings reasonably necessary or proper to enable the same

(*a*) For a definition of " repairs ", see sub-s. (5) of s. 2 of the Rent Act, 1920.

to be let. Paragraph (v) of Part II of the same schedule includes structural additions or alterations whether the buildings are or are not intended to be let or are already let. Sub-section (1) of section 28 of the L. P. Act, 1925, enables trustees for sale to exercise all the powers of a tenant for life and the settlement trustees under the S. L. Act, 1925.

Section 16 of the Trustee Act enables trustees for sale as defined in section 68 (19) to raise money by mortgage for the purpose of providing capital for authorised and lawful purposes. Section 84 of the S. L. Act sets out the mode of application of capital moneys used for improvement purposes (*b*).

As a result of these provisions trustees for sale will have power to apply capital moneys for the purposes of the Housing Act. Clearly, however, not all such expenditure may be contemplated by the S. L. Act. Trustees should therefore be extremely careful before raising money on mortgage or charge, and in their own protection should see that appropriate notices have been served as required by the Housing Act. It should always be remembered that section 9 is the repair section, whilst section 11 stands for something much more expensive. Trustees have a discretion as to what repair work they consider necessary and should be done forthwith and what can reasonably be expected to wait, but very often local authorities regard all required work as most urgent. When the possibility of demolition is under consideration trustees should be very cautious as to whether to let the houses go or bring them up to local standards. Trustees can borrow money for reconstruction schemes without their beneficiaries consenting, but it is always a prudent thing to get the written consent of the parties who are financially interested. If a beneficiary questions the propriety or advisability of borrowing money on mortgage for the express purpose of complying with any undertaking so given as aforesaid instead of using income, then the guidance of the Court should be sought. Having regard to paragraph (a) of section 2 (1) of the Rent Act, 1920, and section 7 of the 1933 Rent Act a landlord who proposes to effect improvements under an undertaking given to the local council should be very careful, if possible, to obtain the tenant's written consent, otherwise such tenant might refuse to pay the percentage increase allowed by law. Difficulties will often arise between landlord and tenant as to whether the proposed works are merely repairs or whether they are improve-

(*b*) The following cases are worthy of a perusal, *viz.*, *Re Gray*, [1927] 1 Ch. 242; *Re Robins*, [1928] Ch. 721; *Re Whitaker*, [1929] 1 Ch. 662; *Re Conquest*, [1929] 2 Ch. 353; and *Re Smith*, [1930] 1 Ch. 88. Also *vide* Halsbury's Supplement, vol. 28, para. 303.

ments or structural alterations, as the tenant will most likely object to paying an increased rental if he can get the improved dwelling at the old rent. The Court of Appeal decided in *Strood Estates Co.* v. *Gregory*, [1936] 2 K. B. 605, that the substitution of a modern and efficient sanitary system for one of an older type was an improvement or structural alteration which entitled the landlord to a permitted increase in rental (*c*). It must always be remembered that a tenant cannot be forced to pay rent to meet the cost of repairs of an ordinary kind beyond the statutory allowance of 25 per cent. under paragraph (i) of section 2 (1) (d) of the Rent Act, 1920.

To avoid any dispute between the trustees and their beneficiaries I suggest that in every case where the council is acting under section 9 or section 11 of the Housing Act a detailed schedule of the suggested works of repair or reconstruction should be obtained. When the procedure mentioned in the Act has been followed and the work completed, the trustees or other person having borne the expense should apply under section 20 of the Housing Act for a charging order by way of annuity over a period of years. When this has been obtained the annuity can be redeemed by virtue of section 21 (5) for a lump sum payment. It is advisable that the terms of the agreement to redeem should be satisfactory to all interested or fixed by the Minister of Health.

This power to redeem seems to be governed by the provisions under section 205 (1) of the L. P. Act, 1925, defining the expression "incumbrance" used in that Act as including an annuity or other capital or annual sum, and under section 73 (1) (ii) of the S. L. Act which allows capital money to be used to discharge or redeem incumbrances affecting the settled land.

Section 121 of the L. P. Act specifies the remedies for the recovery of annual sums charged on land. It will thus be seen that financial provision is made for carrying out necessary works of repair, improvement or reconstruction contemplated by both sections 9 and 11 of the Housing Act, but the procedure as to financial matters is not so clear as it might be. The great point to remember is that there is a vast difference between the incidence of capital improvements, etc., and mere repairs, although it is often difficult to settle what is a repair and what is an improvement. It will be observed from the above that trustees for sale may effect a mortgage to pay for improvements other than under section 20 of the Housing Act.

(*c*) See also *Free* v. *Callender's Trustees*, decided in 1927 in the Scottish Courts, when a watercloset substituted for an earth closet was ruled to be an improvement.

TAX FREE ANNUITIES AND THE FINANCE ACT, 1941.

By Leonard Stein.

The provisions of the Finance Act, 1941, relating to tax free payments are contained in sections 25—27, with which must be read the Tax Free Payments (Transitional Provisions) Regulations, 1941 (S. R. & O., 1941, No. 1476). Tax free annuities and other annual payments are dealt with in section 25 and tax free emoluments in section 26. Section 27 defines certain expressions and provides for the making of Regulations. We are not here concerned with section 26. The purpose of this article is to outline as simply as the nature of the subject-matter permits the effect of the 1941 legislation as it applies to tax free annuities within the scope of section 25. It should be clearly understood that what follows does not purport to be an exhaustive commentary.

The 1941 legislation, in its application to annuities, is not confined to tax free annuities strictly so called; it applies equally to cases in which the annuitant is entitled to such a sum as will after deduction of tax leave a stated amount. The test is whether provision has been made, however worded, for the payment, free of tax, of a stated amount. If it has, it has next to be inquired whether such provision was made before September 3, 1939. In the case of a testamentary provision it has been decided that the provision is to be considered to have been made when the will or codicil took effect on the death of the testator: *Westminster Bank* v. *Awdry*, [1942] W. N. 106. If the provision was made before September 3, 1939, and if, having been made before that date, it has not since been varied, then the 1941 legislation will apply.

The first and simplest effect of its application will be to bring into play sub-section (1) of section 25. This sub-section deals with payments falling to be made during any year of assessment for which the standard rate of tax is ten shillings in the pound—in other words, payments falling to be made in the year of assessment commencing April 6, 1941, or in any subsequent year of assessment in which the standard rate remains unchanged. In relation to every such payment the provision for the payment of a stated sum

will have effect as though the amount of the stated sum were twenty twenty-ninths of what in fact it is. Let it be supposed, for example, that the provision to be considered is a provision made before September 3, 1939, and not since varied, for the payment of such an annuity as will, after deduction of tax, leave £290, payment to be made on January 1 in each year. On January 1, 1941, the annuitant became entitled to an actual net payment of £290. The standard rate of tax for the year 1940–41 being 8s. 6d., the gross amount required to satisfy the liability was approximately £504. The next payment fell to be made on January 1, 1942. By virtue of the 1941 legislation, the actual net payment to which the annuitant was entitled was reduced to £200. With tax at 10s., £200 represents a gross payment of £400. Since £400 is the gross equivalent of £290 with tax at 5s. 6d., the gross amount required to satisfy the liability was the same as it was in the last pre-war year. The reduction of £90 in the net amount actually receivable by the annuitant is the equivalent of tax at 4s. 6d. (the difference between 10s. and 5s. 6d.) on £400, the burden of the increase in the rate of tax over the pre-war rate being thus left to fall upon the annuitant.

Before considering sub-section (2) of section 25, which deals with the payer's liability in cases in which the payment is free of surtax as well as standard rate tax, it will be convenient to look at sub-section (3), which relates to the computation of the total income of the recipient for the purposes of surtax for 1940–41.

Where an annuity is free of standard rate tax but not surtax, the effect of sub-section (3) is very simple. The annuitant's total income for 1940–41, so far as the annuity is concerned, is to be reduced to what it would have been if the 1938–39 standard rate of 5s. 6d. had applied to 1940–41. Let it be supposed, for example, that the annuitant is entitled to such a sum as will after deduction of tax leave £5,000 and that there is no provision for immunity from surtax. In 1940–41 the annuitant will have received his full £5,000, since the 1941 legislation does not apply to payments falling to be made before 1941–42. £5,000 grossed at the 1940–41 rate of 8s. 6d. would be £8,695, and, but for the 1941 legislation, this is the figure at which the amount would enter into the computation of the annuitant's total income for 1940–41 for the purpose of determining the surtax chargeable for 1940–41 and payable on January 1, 1942. The effect of section 25 (3) of the 1941 Act is that, instead of £8,695, the annuity will be taken to represent £5,000 grossed at the 1938–39 rate of 5s. 6d., *viz.*, £6,896.

Where the payment is free of surtax as well as standard rate tax, the effect of section 25 (3) is more complicated. It will be

remembered that, where an annuity is free of surtax, the surtax paid in respect of it will fall to be treated as an additional annuity, with the result that the amount of that surtax, grossed to tax at the current standard rate, will be included in the computation of the annuitant's total income—see *Michelham's Trustees* v. *C. I. R.*, 15 T. C. 737. Where the annuitant has other income, the amount of the surtax attributable to the annuity will be required to be computed according to the well-known rule in *Re Bowring*, 34 T. L. R. 575. This being borne in mind, we may look at section 25 (3) as it applies to surtax free annuities. Instead of discussing its provisions in the abstract, it will, perhaps, be more useful to illustrate them by a hypothetical example.

Let it be supposed that the annuitant is entitled under a will to such a sum as will, after deduction of tax, leave £5,000, and that he has also been given immunity from surtax. Let it further be supposed that the annuity first became payable in the year of assessment 1937–38. In order not to complicate the matter unnecessarily, let it be assumed that the annuitant has throughout had no other income.

It will be convenient to begin by considering the position as it would have been if the 1941 legislation had not been passed. In that case the figures would be approximately as follows—approximately because throughout the calculation fractions of a pound have, as a rule, been ignored:—

TABLE I.

1937–38	Annuity of £5,000 grossed at 5s.	£6,666
	1937–38 total income	£6,666
1938–39	Annuity of £5,000 grossed at 5s. 6d.	£6,896
	Surtax for 1937–38 payable by Trustees—surtax on £6,666 at 1937–38 rates is £675, which, grossed at 5s. 6d., represents	£931
	1938–39 total income	£7,827
1939–40	Annuity of £5,000 grossed at 7s.	£7,692
	Surtax for 1938–39 payable by Trustees—surtax on £7,827 at 1938–39 rates is £1,038, which, grossed at 7s., represents	£1,597
	1939–40 total income	£9,289

TABLE I—*continued.*

1940–41	Annuity of £5,000 grossed at 8s. 6d.	£8,695
	Surtax for 1939–40 payable by Trustees—surtax on £9,289 at 1939–40 rates is £1,757, which, grossed at 8s. 6d., represents	£3,055
	1940–41 total income	£11,750

The surtax payable on January 1, 1942, *viz.*, surtax at 1940–41 rates on £11,750, would be £2,728. Grossed at the 1941–42 rate of 10s, this would represent £5,456, which would form part of the annuitant's total income for 1941–42.

By virtue of sub-section (3) of section 25, the annuitant's total income for 1940–41 will, for the purposes of surtax, be taken to be what it would have been if the 1937–38 rates of surtax and the 1938–39 standard rate had remained unchanged. This will work out as follows:—

TABLE II.

1937–38	Annuity of £5,000 grossed at 5s.	£6,666
	1937–38 total income was	£6,666
1938–39	Annuity of £5,000 grossed at 5s. 6d.	£6,896
	Surtax for 1937–38—surtax on £6,666 at 1937–38 rates is £675, which, grossed at 5s. 6d., would represent	£931
	1938–39 total income was	£7,827
1939–40	Annuity of £5,000 grossed at **5s. 6d.**	£6,896
	Surtax for 1938–39—surtax on £7,827 at **1937–38** rates would be £931, which, grossed at **5s. 6d.**, would represent	£1,284
	1939–40 total income would have been	£8,180
1940–41	Annuity of £5,000 grossed at **5s. 6d.**	£6,896
	Surtax for 1939–40—surtax on £8,180 at **1937–38** rates would be £1,018, which, grossed at **5s. 6d.**, would represent	£1,404
	1940–41 total income will be taken to be	£8,300

On this notional total income of £8,300 for 1940–41 surtax will be payable at the 1940–41 rates. The surtax chargeable for 1940–41 and payable on January 1, 1942, will accordingly be £1,411. As already seen, but for the 1941 legislation it would have been £2,728.

So much for section 25 (3). We now turn to section 25 (2) in order to ascertain how the 1941 legislation affects the payment to be made in respect of surtax by the trustees. It is proposed to follow through the illustration just given, which related to 1940–41. But whereas section 25 (3) is concerned with the adjustment of the recipient's computation of his total income for 1940–41 and not for any other year of assessment, section 25 (3) can be invoked by the trustees in relation to the surtax payable in respect of the annuity for 1940–41 or for any subsequent year, provided that it precedes a year for which the standard rate is 10s. If, for example, the standard rate were to remain unchanged until (say) 1944–45 and were reduced to 9s. for 1945–46, then section 25 (2) would continue to apply in relation to surtax for all years of assessment from and including 1940–41 up to and including 1944–45.

Returning to the illustration given above, the first step will be to ascertain the sum which would be sufficient to satisfy the trustees' liability in respect of the 1940–41 surtax if the 1937–38 rates of surtax had applied to 1940–41. Surtax on £8,300 at 1937–38 rates of surtax would amount to £1,051. The effect of section 25 (2) is that the trustees' liability will be limited to twenty twenty-ninths of this amount, *viz.*, £725. The result will be that, out of the 1940–41 surtax amounting to £1,411, £725 will be found by the trustees and the balance of £686 will be left to be borne by the annuitant. In computing the annuitant's total income for 1941–42, the amount to be included in respect of the additional annuity representing immunity from surtax will be £725 grossed at the 1941–42 rate of 10s., *viz.*, £1,450.

The illustration may be completed by carrying it a stage further:—

TABLE III.

1941–42	Annuity, $\frac{£5,000 \times 20}{29}$ = £3,448, grossed at 10s. ..	£6,896
	Proportion of surtax for 1940–41 payable by trustees (see above)—£725, grossed at 10s. ..	£1,450
	1941–42 total income	£8,346
	Proportion of 1940–41 surtax left to be borne by annuitant (see above)	£686

TABLE III—*continued.*

1942–43	Annuity, $\frac{£5,000 \times 20}{29}$ = £3,448, grossed at 10s. ..	£6,896
	Proportion of surtax for 1941–42 payable by trustees—surtax on £8,346 at 1937–38 rates = £1,064. $\frac{£1,064 \times 20}{29}$ = £733, which, grossed at 10s., represents	£1,466
	1942–43 total income	£8,362
	Proportion of 1941–42 surtax left to be borne by annuitant (surtax on £8,350 at **1941–42** rates, *i.e.*, £1,428, less £733 payable by trustees)	£695

The computation will proceed on these lines in respect of each succeeding year of assessment down to and including the year next preceding a year for which the standard rate is a rate other than 10s.

It will be seen that in each year of assessment the gross cost to the trustees of the annuitant's immunity from surtax will be the same as it would have been if the 1938–39 standard rate and the 1937–38 rates of surtax had remained unchanged. For, first, it is on this footing that the annuity (including the additional annuity representing immunity from surtax) is to be quantified in the computation of the annuitant's total income for 1940–41, this being the computation determining the amount of surtax chargeable for 1940–41 and payable in 1941–42. Secondly, so far as the trustees are concerned, surtax will be deemed to be chargeable at the 1937–38 rates. Thirdly, their liability will be limited to twenty twenty-ninths of the amount of the surtax so computed, and twenty twenty-ninths of that amount, grossed at 10s., is equivalent to the whole amount grossed at 5s. 6d.

Sub-section (4) of section 25 deals with one further problem remaining to be solved in order to complete the adjustment which the 1941 legislation is designed to effect. Let it be supposed that X is entitled under a will to a tax free annuity of £290, and that the testamentary provision was, within the meaning of section 25 (1), made before September 3, 1939, and not varied on or after that date. If what has been provided is a tax free annuity strictly so called—not merely an annuity of such an amount as will, after deduction of tax, leave £290—then the well-known rule in *Re Pettit*, [1922] 2 Ch. 765, will apply, with

the result that the amount of any tax repaid to the annuitant in respect of reliefs (or, if the annuitant has other income, the appropriate proportion of that amount) will have to be accounted for to the trustees. Let it be assumed, for the sake of simplifying the illustration, that the annuitant has no other income, so that, but for the 1941 Act, the whole amount of the tax repaid would have to be accounted for by the annuitant. The adjustment effected by section 25 (4) may be illustrated by reference to the figures for 1941–42, it being borne in mind that the same principles will be applicable in relation to every subsequent year of assessment for which the standard rate remains at ten shillings.

The stated amount being £290, the payment falling to be made in 1941–42 will, by virtue of section 25 (1), be reducible to £200, being twenty twenty-ninths of the stated amount. For the purposes of the annuitant's claim to repayment of tax, this will represent £400 gross, less tax at 10s. In computing the gross equivalent of the annuity, an adjustment will be required to allow for the annuitant's payment over to the trustees of tax repaid, but for the purposes of the present illustration it is unnecessary to introduce this refinement, which will accordingly be disregarded.

For 1941–42 the annuitant will be entitled to repayment of tax in respect of reliefs at the 1941–42 rates on the footing that he has suffered tax by deduction in the amount of £200. Assuming him to be unmarried, these reliefs will comprise personal allowance, £80 at 10s. = £40, and reduced rate relief, £165 at 3s. 6d. = £28 17s. 6d., or a total of £68 17s. 6d.

The next step is to ascertain the amount for which the annuitant would have been accountable to the trustees if repayment of tax had been claimable by him by reference to the 1938–39 rates of relief. At the 1938–39 rates the personal allowance would represent £100 at 5s. 6d. = £27 10s., and the reduced rate relief would represent £135 at 3s. 10d. = £25 17s. 6d., or a total of £53 7s. 6d. The effect of section 25 (4) is to limit the annuitant's accountability to the trustees to twenty twenty-ninths of the £53 7s. 6d., *i.e.*, £36 16s. 2d. For the purposes of this illustration, the annuitant has been assumed to have no other income. If he had other income besides the annuity, then, supposing the gross equivalent of the annuity to represent (say) one-half of his total income, the basic figure would, of course, be one-half of £53 7s. 6d., and the trustees would be entitled to recover twenty twenty-ninths of that one-half.

Returning to the illustration, it will be seen that the annuitant recovers tax in the amount of £68 17s. 6d., pays over £36 16s. 2d.

to the trustees and accordingly retains £32 1s. 4d. What he is ultimately left with is, therefore:—

Annuity, twenty twenty-ninths of £290	£200 0 0
Excess of tax recovered (£68 17s. 6d.) over amount to be accounted for to the trustees (£36 16s. 2d.) ..	£32 1 4
	£232 1 4

If the 1941 legislation had not been passed, he would have been left with £290—*i.e.*, he would have received the stated amount in full but would have had to account to the trustees for the whole of the tax repaid. The difference of £57 18s. 8d. represents the burden of war taxation falling to be borne by the annuitant.

From the trustees' point of view, the result is that the gross equivalent of the net amount ultimately paid will be the same as in 1938–39. In 1938–39 the *net* amount ultimately paid was:—

Annuity	£290 0 0
Less tax repaid accounted for by annuitant	£53 7 6
	£236 12 6

which, grossed at the 1938–39 rate of 5s. 6d., represents a gross sum of £326 7s. 8d. In 1941–42 the corresponding net figure will be:—

Annuity	£200 0 0
Less proportion of tax repaid to be accounted for by annuitant	£36 16 2
	£163 3 10

which, grossed at the 1941–42 rate of 10s., likewise represents a gross sum of £326 7s. 8d.

The 1941 Act was not passed until July 22, 1941, and provision had, therefore, to be made for payments falling due in the year of assessment 1941–42 before the Act became law. This was authorised by section 27 (2) of the Act and has been effected by the Tax Free Payments (Transitional Provisions) Regulations, 1941 (S. R. & O., 1941, No. 1476). Let it be supposed that a tax free annuity of £3,480, being an annuity satisfying the requirements of section 25 (1) of the 1941 Act, is payable by equal monthly instalments of £290 falling due on the first of each month; that

from and including August, 1941, the monthly payment has been reduced, as provided by the Act, to £200; but that the instalments falling due in May, June and July, 1941, were paid in full, the Act not yet having come into force. The effect of the Regulations is that the annuitant will be considered to have had three over-payments of £90 each, or £270 in all, and that the £270 will be recoverable by deduction from payments falling due after September 24, 1941 (the date of the Regulations) and before July 22, 1942. This is subject to the proviso that the maximum deduction which may be made from any one payment is a deduction equal to nine twenty-ninths of the amount of that payment as it would have been if the 1941 Act had not been passed. In other words, in the hypothetical case under consideration the maximum deduction allowable under the Regulations in the case of any one monthly payment would be a deduction of nine twenty-ninths of £290, or £90. Thus, in October, November and December, 1941, the amount which the annuitant could demand was reduced to £200 (twenty twenty-ninths of £290), less £90 (nine twenty-ninths), or £110.

If the annuity has become payable to some person claiming through or under the original annuitant, the right to recover over-payments by deduction will remain unaffected. If the annuitant, or a person claiming through or under him, has received, free of deduction, a payment from which a deduction might have been but has not, in fact, been made under the Regulations, the amount which might have been deducted will be recoverable, as though it were a simple contract debt, from the person who received the payment.

Cases may arise in which, by reason (for example) of a life annuitant's death, a series of payments ended before the date of the Regulations (September 24, 1941), or ends before the expiration of the deduction period, *i.e.*, before July 22, 1942. In any such case any amount which would, by virtue of the Regulations, have been deductible from any payment, had the series continued, will, at any time after that payment would have become due, be recoverable, as though it were a simple contract debt, from the person overpaid or his personal representatives.

Cases may also arise in which the right to receive a series of payments had passed before the date of the Regulations, or passes before the expiration of the deduction period, to someone who is not a person claiming through or under the original payee. Where this is the position, the amount which would have been deductible from any payment had it been receivable by the original

payee will, at any time after that payment has become due, be recoverable, as though it were a simple contract debt, from the original payee or his personal representatives.

If any part of the overpayment is not recoverable under the foregoing rules, then at any time after July 22, 1942, it will be recoverable, as though it were a simple contract debt, from the person overpaid or his personal representatives.

WAR DAMAGE TO LEASEHOLD PROPERTIES.

A CONSIDERATION OF THE LANDLORD AND TENANT (WAR DAMAGE) ACTS, 1939 AND 1941.

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The subject of War Damage to property comprised in short tenancies has already been considered by the writer in an article earlier in this volume (*a*). It is proposed here to deal exclusively with tenancies which are not "short tenancies"; references to a lease or tenancy should be understood accordingly. To avoid duplication, no consideration will be given here to the question what is a short tenancy; reference may be made to the earlier article for that subject.

1. DEFINITION OF WAR DAMAGE.

By virtue of section 17 (2) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, the expression "war damage" has the same meaning both in the principal Act and in the Amendment Act as it has in the War Damage Act, 1941, and the definition formerly contained in the principal Act is abolished; that is to say, for all relevant purposes "war damage" means—

(a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy;

(b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid

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(*a*) *Supra*, p. 116.

the spreading of, or otherwise to mitigate, the consequences of such damage as aforesaid;

(c) accidental damage occurring as the direct result—

(i) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy; or

(ii) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,

being, in either case, measures involving a substantial degree of risk to property. The measures here referred to do not, by an express proviso, include the imposing of restrictions on the display of lights or measures taken for training purposes.

Action taken includes, for the purposes of paragraph (a), reconnaissances and patrols, and in relation to any ship or aircraft taking part in such action is deemed to continue until the ship or aircraft has returned to its base.

Apart from the obvious advantage of standardising a definition of "war damage", the adoption of a common definition is essential if the Landlord and Tenant (War Damage) Acts and the War Damage Act, 1941, are to be worked together as one code of law, which is the object of the Amendment Act of 1941.

The new definition has not yet been clarified by reported judicial decision, but a few observations may be made as to changes apparently brought about by its adoption. The old definition included "damage caused by, or in repelling, enemy action". In the new definition emphasis is laid on the damage being the *direct result* of action taken by the enemy or in combating the enemy, etc. This obviously limits the field, and is intended to exclude *indirect consequences*. To take an example, the direct results of a bomb may include, amongst other things, the removal of tiles from a roof. The subsequent intrusion of rainwater and consequent damage to decorations, etc., seems to be only an indirect result of the action taken by the enemy, and may therefore be excluded from the definition. On the other hand, it might be argued that the blasting of the roof is not the result but actually is the action taken by the enemy, being contemplated and intended when the explosives were dropped, the bomb being merely the weapon whereby this action was carried out: on this view the damage by rainwater might be regarded as the "direct result". This latter view seems to the writer to be too metaphysical, the former being more likely to be accepted as the correct view, but it serves to illustrate the kind of question which is sure to arise under the definition of war damage. Again, the old definition

included, in general terms, damage caused by measures taken to avoid the spreading of the consequences of damage caused by, or in repelling, enemy action. This is limited in the new definition to the *direct results* of measures taken *under proper authority* to avoid the spreading of, or otherwise to mitigate, the consequences of the damage. Again, indirect consequences are excluded, and the results of any act, however beneficial to the community at large, which is not done under proper authority are not within the definition of war damage. This seems to inflict hardship on the victim of well-meaning but unauthorised demolitions, etc., to prevent, for example, the spreading of fire. It is relevant to mention here that very wide powers are conferred upon the fire brigades and National Fire Service to prevent the spreading of fire, and of course the most drastic steps taken in exercise of these powers will be done under proper authority and so comprised within the definition of war damage.

On the other hand, the definition of war damage is in some respects broadened by the new enactment : for example, the direct result of action taken in repelling an imagined attack by the enemy is now expressly included. And when enemy attack is anticipated by precautionary or preparatory measures taken under proper authority and aimed at preventing or hindering the enemy attack, accidental damage occurring as the direct result thereof is now within the definition.

2. UNFITNESS OF LAND.

The provisions of the Acts relative to disclaimer, etc., come into operation when the land comprised in a lease is unfit by reason of war damage. Unfitness is defined in section 24 of the principal Act and this definition remains without modification :—

(a) Buildings or works (including land of which three-quarters of the value is attributable to buildings or works) are unfit if they are unfit for the purpose for which they were used or adapted for use immediately before the war damage, having regard to the likely class of tenant, to the standard of accommodation available at the material time and to all other circumstances.

(b) Other land is unfit if it is unfit for any purpose for which the tenant can be reasonably expected to use the land, having regard to the terms of the lease under which it is held.

It should be pointed out that the special definition of fitness provided by the Amendment Act of 1941 in relation to dwelling-houses only applies to dwelling-houses let on short tenancies and has no application here.

It seems reasonable to suppose that the words "adapted for use" in the above definition bear the same meaning as in the definition of "multiple lease"; in the latter connection they have been held to mean "reasonably suitable for use", and not to denote that any physical work of alteration has been carried out: *Herrmann* v. *Metropolitan Leather Co., Ltd.* (1942), 58 T. L. R. 145, approved by the House of Lords in *Westminster Bank, Ltd.* v. *Edwards* (1942), 58 T. L. R. 201.

Premises are "unfit" if some repairs need to be carried out before the building will be fit for such purpose as aforesaid, even though they can be made suitable for that purpose by the expenditure of a comparatively small sum: *Boudou* v. *Thornton-Smith* (1941), 57 T. L. R. 387.

Disputes as to whether land is "unfit" are settled by the Court on application. Where the question is raised on a notice of disclaimer or notice to elect, the jurisdiction is under section 6 of the principal Act. Where a notice of retention or notice to avoid disclaimer was served in respect of land rendered unfit, and repairs having been carried out there is a dispute as to whether or on what date the land has been rendered fit, the jurisdiction is under section 14 of the Amendment Act. In either case (and in all other proceedings under the Acts) the appropriate Court is the county court (section 23 of the principal Act); by summons *inter partes* the matter may in a proper case be removed into the High Court by *certiorari*: *Re Portman and Roskill's Lease* (1941), 57 T. L. R. 267; see also *Clavering* v. *Conduit Mead Co., Ltd.* (1940), 57 T. L. R. 146, as to adequate grounds for removal into the High Court (absence of judicial authority on difficult questions of law under recent legislation). Upon transfer to the High Court the proceedings will normally be heard by one of the Judges nominated under section 94 of the War Damage Act, 1941 (Amendment Act, s. 16). The Judge hearing the matter can summon an assessor and may direct him to inspect the land. Where a notice of disclaimer or notice to elect is served, it is necessarily on the basis of the land being unfit in the view of the party serving the notice, and unless application is properly made under section 6 of the principal Act and the Court decides otherwise, the land is deemed to have been unfit when the notice was served.

3. Notices of Disclaimer, Retention, etc.

When demised land has been rendered unfit by reason of war damage, the tenant may serve either an unconditional notice under the principal Act or a conditional notice under the Amendment Act.

(a) *Unconditional Notices.*

The tenant may serve under section 4 of the principal Act either a notice of disclaimer or a notice of retention. It is not intended to consider here in full detail the nature and incidence of these notices, since they have been fully dealt with in many places already (see, for example, *The Conveyancer*, Vol. 4, p. 39; Woodfall Supplement No. 2, p. 32). The notice of disclaimer must contain certain details specified in section 7 of the principal Act, and the lessee who serves such a notice must also serve a notice thereof on persons claiming any interest immediately under him. The effect of a notice of disclaimer is, under section 8, to operate as a surrender from the date of the notice, although there is a period during which the landlord can avoid this by serving an effective notice to avoid disclaimer under section 4 (5). When such surrender takes effect the lease disclaimed and all sub-leases, save only an occupation tenancy in respect of which no notice of disclaimer has been served, are deemed to be extinguished; this operation of a notice of disclaimer can under section 9 be modified by the Court in certain specified ways on the application of a person having an interest under the term or in the immediate reversion thereon. Rent is apportionable as from the date of the surrender (section 13 of the Amendment Act).

A notice of disclaimer must, under section 20 of the principal Act, be in writing; beyond this, no formalities are required: *Black* v. *Mileham* (1941), 58 T. L. R. 13 (considered in some detail at p. 142, *supra*).

A landlord upon whom a notice of disclaimer is served has one month during which he may serve a notice to avoid disclaimer, which requires the tenant to retain the lease on terms specified in the Act. The relevant section is section 11 of the principal Act, but there is no need to specify this section in the notice, and even a mistaken reference to the wrong section does not impair the validity of the notice, providing its meaning is clear: *Price* v. *Mann* (1942), 58 T. L. R. 109. There can be no doubt the principle of this decision applies to all notices under the Acts (see also *Black* v. *Mileham*, *supra*). The effect of a notice to avoid disclaimer is, under section 11, to imply a covenant on the part of the landlord to render the land fit as soon as is reasonably practicable, and also that (subject to a contrary direction by the Court where part of the land is capable of beneficial occupation) no rent is payable from the date of service of the notice of disclaimer until the land is rendered fit. The rent is for this purpose apportionable whether payable in advance or otherwise, and any sum paid by the tenant

in excess of the amount apportionable to the period for which rent is payable may be recovered by him (section 13 of the Amendment Act).

Where the tenant chooses to serve a notice of retention the effect of this is, under section 10, to imply on the part of *the tenant* a covenant to render the land fit as soon as is reasonably practicable, and also that (subject again to a contrary direction by the Court where part of the land is capable of beneficial occupation) no rent is payable from the date of service of the notice until the land is rendered fit. The Amendment Act makes the same provision here for apportionment of rent as in the case of a notice to avoid disclaimer. There is an important safeguard for the landlord in a proviso whereby he can apply to the Court for payment of rent to be ordered if there is unreasonable delay on the part of the tenant in rendering the land fit. Rent includes any periodical sum payable by the tenant to the landlord in connection with his tenancy (Amendment Act, s. 17 (4)).

If the tenant does not serve either a notice of disclaimer or a notice of retention, the landlord may serve upon him a notice to elect requiring him to serve one or other notice within one month, and if the tenant fails to comply he is deemed, by section 4 (4), to have served a notice of retention. Other provisions as to notices to elect are contained in section 5 of the principal Act.

(b) *Conditional Notices.*

Under the War Damage Act, 1941, the War Damage Commission may decide to make either a payment of cost of works or a value payment in respect of any damaged premises; by section 4 of that Act the payment will, in the case of a developed hereditament (*i.e.*, where there are buildings) be a payment of cost of works unless the damage involves total loss, that is to say, is such that the required works will cost more than the difference between the site value and the value that the hereditament would have after completion of the works. Obviously it is material to the tenant to know which basis of payment is likely before he chooses whether to elect or retain, but under the Act of 1939 he could be required by the landlord to elect irrevocably within one month by service of a notice to elect.

Now, under section 2 of the Amendment Act of 1941, the tenant may serve a conditional notice, the final operation of which depends upon the decision of the War Damage Commission. This takes the form of a conditional notice of retention; it contains a statement that the notice is conditional and will be treated as a notice of disclaimer if the War Damage Commission determine to make

a *value payment* in respect of the war damage. In other words, the tenant will retain the property and reinstate it unless the circumstances are such that reinstatement would not be an economic proposition and the War Damage Commission accordingly determine to make a value payment. If on the other hand the Commission make a cost of works payment it will be the tenant's obligation to render the land fit.

In some cases a value payment is deemed for this purpose to have been decided on (and the conditional notice will have effect accordingly), although such is not actually the case (Amendment Act, s. 4). Thus where the Commission determine to make a payment under section 15 of the War Damage Act (cases of exceptional site value) or make no payment because of the high site value, and in certain cases under section 39 (land held for charitable purposes), a value payment is for the present purposes deemed to have been made. But on the other hand where the only reason for a value payment is a compulsory acquisition of the property whilst in a damaged conditon within section 16 of the War Damage Act, this is not regarded as a value payment for the present purposes and a conditional notice of retention is not affected thereby.

For his notice to operate as a conditional notice of retention the tenant must, within one month of the service thereof on the landlord, serve a copy on the War Damage Commission. This may be done by delivery to an officer of the Commission at any office of the Commission, or by registered letter addressed to the Commission at any office of the Commission (section 8 (4)). In due course the Commission will notify the tenant of their decision. If the decision is to make a payment of cost of works then the operation of the notice as a notice of retention is in no way affected. If on the other hand the decision is to make a value payment, the conditional notice takes effect as a notice of disclaimer served on the date on which the determination becomes final. The provisions of sections 8 and 9 of the principal Act then take effect with appropriate adaptations; if a person interested under the lease or in the reversion wishes to make application to the Court for modification of the operation of the notice, such application must be made within one month, subject to extension of time by the Court.

It is to be noted that by section 8 of the Amendment Act any landlord or tenant may request to be notified of the Commission's determination, but a tenant who has followed the procedure laid down for a conditional notice of retention will be notified by the Commission without further request. The determination of the Commission becomes final when the time for appeal therefrom

expires (see War Damage Act, 1941, s. 6), or the appeal is determined or abandoned (but where the determination is affected in a material respect as the result of an appeal a new determination altogether will be made by the Commission in accordance with the decision of the Court).

Within fourteen days of the date on which the determination becomes final the tenant must serve on the landlord and on any person claiming immediately under the tenant a notice identifying the lease and stating that the conditional notice of retention is to be treated as a notice of disclaimer. Each recipient of such a notice (excepting the landlord) must serve a like notice on any person deriving an interest under him in the land demised. Any person who fails to comply with these requirements is liable to make good any damage occasioned thereby to any other person.

Until the War Damage Commission notify their determination the liability of a tenant who has served a conditional notice of retention is limited to an obligation to execute such works as are reasonably practicable for temporarily meeting the circumstances created by the damage, to take necessary steps to enable the Commission to make their determination, and at the same time to take such steps as are reasonably practicable to secure that if the Commission decides on a payment of cost of works, the necessary works will be executed without delay. Provided the tenant does this, the landlord cannot complain of unreasonable delay on the part of the tenant in rendering the land fit. In other respects the conditional notice operates as an ordinary notice of retention pending the decision of the War Damage Commission. Rent is suspended under section 10 of the principal Act, and any disputes as to the unfitness of the premises will be decided as under section 6 of the principal Act.

If further war damage occurs while a conditional notice is operative, the notice will extend also to the new damage, unless the tenant exercises the right which he has under section 12 of the principal Act to apply to the Court for leave to withdraw the notice.

The Amendment Act contains a provision enabling a tenant, within three months of the date of the passing of the Act, to convert a subsisting notice of retention into a conditional notice by serving on the landlord and the War Damage Commission the notices requisite for constituting a conditional notice (see above).

It is to be noted that only a notice of retention may be made conditional under the above provisions; there is no such thing as a conditional notice of disclaimer or conditional notice to avoid disclaimer.

4. MULTIPLE LEASES AND LEASES COMPRISING SEPARATE HEREDITAMENTS.

Leases comprising buildings which are used or adapted for use as two or more separate tenements are known in the Acts as "multiple leases". Whether a lease is a multiple lease is a question of fact for the trial Judge to decide on the evidence (*Westminster Bank, Ltd.* v. *Edwards* (1942), 58 T. L. R. 201, H. L.), and the words "adapted for use" do not mean that some physical work of alteration has been carried out but mean simply "reasonably suitable for use" as two or more tenements in the ordinary course of business (*Herrmann* v. *Metropolitan Leather Co., Ltd.* (1942), 58 T. L. R. 145).

Either unconditional notices or conditional notices of retention may be served in respect of multiple leases. The main point to be noted is that in either case section 6 of the principal Act (governing applications to the Court as to unfitness of premises) does not apply and a special procedure is provided in section 15 of the principal Act, which is applied to conditional notices of retention with the modifications set out in the Schedule to the Amendment Act, regulating disputes and applications to the Court.

Where a notice of disclaimer or retention, or a notice to elect, is served under the Acts, in respect of a multiple lease, either party or any other person interested under the lease or in the reversion may within one month apply to the Court to determine the extent to which the tenant should be allowed to disclaim or retain. Then the Court, having regard to the extent of the war damage suffered by the demised land as a whole and all the circumstances (including any offers by the landlord for an extension of the term or alteration of the rent or other modification of the lease) may decide

(a) that it is equitable to allow disclaimer or retention of the lease as a whole; or

(b) that it is equitable to allow disclaimer or retention as respects one or more "disclaimable tenements" (in which case the lease will be treated as two separate leases and consequential directions given as to apportionment of rent, service of notices, etc.); or

(c) that it is not equitable to allow disclaimer or retention at all (in which case the Court will direct that the land is deemed to be fit).

If no application is made under this section with respect to a notice of disclaimer or retention, or a notice to elect, served in

relation to a multiple lease, the land is deemed to have been unfit when the notice was served.

For an example of case (a) above, where disclaimer of the lease as a whole was held to be equitable, see *Herrmann* v. *Metropolitan Leather Co., Ltd.* (1942), 58 T. L. R. 145.

It must be observed that there is no provision enabling the tenant under a multiple lease to disclaim some tenements only; he will have to disclaim the lease as a whole, but may then make the application under section 15 himself.

Where the notice served by the tenant under a multiple lease is a conditional notice of retention, then the application to the Court under section 15 must still be made within one month of service of the notice, and seemingly the Court will have to consider whether it is equitable to allow *conditional* retention, on the terms of section 2 of the Amendment Act, in respect of all or any of the tenements. Curiously enough, tenements in respect of which the right of *retention* is allowed are still described as "disclaimable tenements".

Where disclaimer is allowed of some or all of the tenements comprised in a multiple lease, but the landlord is not entitled to possession of the whole of the land comprised in the lease free from any interest in or derived out of the term, the Court may on the landlord's application grant possession on such terms as to compensation etc. as appear just (section 16 of the principal Act). It will be remembered that, for example, a notice of disclaimer does not affect an occupation sub-tenancy, which might therefore be made the subject of an application under section 16.

It does not necessarily follow that a multiple lease will be dealt with by the War Damage Commission in assessing claims as two or more separate units or "hereditaments"; nor that leasehold property which is so dealt with by the Commission is held under a "multiple lease" within the Acts, for the Commission have a complete liberty to deal with the property in such units as they may determine (War Damage Act, 1941, s. 2). Nevertheless it may reasonably be supposed that where the Commission see fit to deal with leasehold property held under one lease as two or more hereditaments or "units", that lease will normally be a multiple lease within the Landlord and Tenant (War Damage) Acts.

Where land comprised in one lease falls within different hereditaments as dealt with by the Commission, the Commission may of course determine to make a value payment in respect of one or more, but not all, of those hereditaments. Then if he has

served a conditional notice of retention in respect of the lease the tenant may within one month of the determination of the Commission becoming final apply to the Court for an order treating the lease as two separate leases and the notice as two notices relating to the respective leases. If the Court makes such an order, the notice in respect of the land as to which a value payment is to be made will take effect as a notice of disclaimer, and the other provisions of section 2 (2) and (3) of the Amendment Act will apply from the date of the order. Consequential directions will be given as to apportionment of rent and other matters. If the Court refuses such an order, or no application is made, the tenant has one month from the date on which the determination of the Commission became final (or such period as the Court may allow on application under this section) to serve on the landlord a notice stating that he elects to treat the conditional notice as an unconditional notice of retention; otherwise all the land comprised in the lease will be deemed to be disclaimed as from one month after the determination of the Commission becomes final, or from such later date as the Court may fix where application is made under this section but no order is made.

It is almost superfluous to comment that the provisions of this section are elaborate in the extreme and merit very careful study where the circumstances conditioning the section arise, that is to say, land comprised in one lease the subject of a conditional notice of retention falls within different units as dealt with by the Commission, and a value payment is decided upon as regards some but not all of those units.

5. GROUND LEASES.

Since the passing of the Amendment Act the principal Act applies to ground leases in like manner as to other leases, and sections 13 and 14 of the principal Act, which contained special provisions applicable to ground leases as defined in that Act, cease to have effect (Amendment Act, s. 10). Whether the damage occurred before or after the passing of the Amendment Act, a notice of disclaimer or retention, or notice to elect, may be served in respect of a ground lease. Even where such a notice was served before the Amendment Act it is validated unless already held by the Court to be of no effect, or the parties have so agreed prior to the Amendment Act: then a new notice may be served under the Amendment Act. The section also contains provisions as to discontinuance of proceedings under section 13 or 14 of the principal Act and other consequential matters.

6. Obligation to Reinstate Where Payment of Cost of Works is Made.

Under the principal Act one of the effects of a notice of retention is to place the tenant under an obligation to render the land fit as soon as is reasonably practicable after the date of service of the notice. A like obligation is incurred by the landlord as a result of serving a notice to avoid disclaimer. By section 5 of the Amendment Act this obligation is in each case to be construed, where the War Damage Commission determine to make a cost of works payment, as an obligation to reinstate the land as soon as is reasonably practicable in the form in which it existed immediately before the occurrence of the damage, subject to any requirements imposed by the Commission as to the nature of the works, the materials to be used therefor or otherwise. If however the reinstatement of part of the land could be omitted without detracting from its value, or the omission thereof would increase the value of the land, that part of the reinstatement need not be carried out. Questions as to the works to be carried out may be decided by the Commission, who may also upon application direct the inclusion of alterations and additions where they are satisfied that it is reasonable to do so (but if the cost of reinstatement exceeds the payment of cost of works such part of the excess as is attributable to the alteration or addition will be borne by the applicant).

Failure to carry out the obligation to reinstate, or unreasonable delay, entitles the other party to apply to the Commission for the transfer of the obligation to him. The only advantage of this appears to be that there are thereby conferred upon him "such powers of entry or otherwise as may be necessary to enable him to carry out the obligation". In any case the payment of cost of works will be made to the person by whom the expense was incurred (War Damage Act, 1941, s. 9).

Where neither party is under any obligation under the principal Act to render the land fit, any obligation to repair under the lease which would but for section 1 of the principal Act extend to the war damage (or the greater part thereof) is to be construed in like manner as an obligation to render the land fit. The effect of this rather roundabout piece of legislation seems to be that section 1 of the principal Act is to this extent modified and the obligation to make good war damage restored where the Commission determine to make a payment of cost of works. Application may be made to the Court to determine any question arising under this

provision in relation to a lease. Where, by reason of sub-tenancies, more than one person is under an obligation to reinstate, application may be made to the Court for a direction who is to carry out the obligation.

Where the Commission have decided on a payment of cost of works, and some person is by section 5 under an obligation to reinstate, that obligation is suspended by the occurrence of fresh war damage, and will either cease altogether or extend to the entire reinstatement according to whether the Commission determine to make a value payment or payment of cost of works in respect of the subsequent damage (section 5 (6)).

7. Provisions Where Tenant Retains Lease and Value Payment is Made.

A tenant who has served an unconditional notice of retention, and is accordingly under an obligation to render the land fit, has by section 6 of the Amendment Act six months after the Commission's determination to make a value payment (or such further period as the Commission may allow) in which he may derive an advantage by submitting to the freeholder and any leaseholders or mortgagees of the land proposals for reinstatement or the construction of buildings of the character and value of those previously existing; if the proposals are accepted or are reasonable in the opinion of the Commission, and are carried out within a reasonable time, the whole value payment will be made to the person who has incurred the cost of such reinstatement; there are limited exceptions stated in the section in favour of certain classes of leaseholders.

If it appears to the Court that in all the circumstances it is not reasonably practicable to require a tenant to carry out his obligation to render land fit under an unconditional notice of retention, it has power to direct that the obligation shall cease to have effect and that the notice be treated as a conditional notice of retention (section 6 (2)).

Where a lease (in particular a covenant to repair) is affected by any change in the land resulting from anything done under section 5 or 6 of the Amendment Act, the lease will by section 7 have effect subject to such adaptation or modification as may be agreed or determined by the Court. This will apply, for example, to reinstatement with alterations under section 5, or the construction of a new building under section 6.

8. Other Matters.

(a) *Powers of Entry.*

Where urgent repairs are necessary to prevent deterioration as a result of war damage, any freeholder, lessee or mortgagee (or person authorised by such) may under section 12 of the Amendment Act enter for the purpose of executing the necessary repairs, and may use such force as is reasonably necessary for effecting entry. Furthermore any tenant of land which is unfit by reason of war damage may, notwithstanding service by him of a notice of disclaimer, enter for the purpose of taking any necessary measures to preserve or remove any furniture or other goods belonging to or used by him.

(b) *Relief from Obligation to Insure.*

An omission in the principal Act is made good by section 11 of the Amendment Act, whereby any express obligation to insure land against war damage is void and is deemed always to have been void, and an obligation to insure against fire or other risks is to be construed as not including war damage.

(c) *Damage Other Than War Damage.*

Where land has been reinstated or rendered fit under the Acts and the cost thereof has been increased by damage other than war damage or ordinary wear and tear, and the person reinstating or rendering the land fit would have been entitled, but for section 1 of the principal Act, to require his landlord or tenant to make good the damage or indemnify him, such person may recover from his landlord or tenant the amount of such increase in cost. Rights in respect of insurance moneys payable in relation to such damage are not affected, but any amount received by virtue of any such right is to be deducted from the amount recoverable under this provision (Amendment Act, s. 15).

REGISTRATION OF TITLE—A REJOINDER.

By E. O. WALFORD, LL.D.

It is true that "good wine needs no bush"; and therefore it is probably a work of supererogation to continue the discussion of the merits (*a*) or demerits (*b*) of registration of title. The writer of the article referred to in footnote (*b*) has sought to persuade the readers of *The Conveyancer* of so many things that it is doubtful whether it will be possible to consider all those things here. Let us consider some of them:—

(1) It has been submitted that in an ordinary country town there are probably some half-dozen large estates from which numerous titles are derived; but that "the titles are perfectly well known to the practitioners in the neighbourhood and the difficulty that they cause is of the smallest, *though when they have to be dealt with outside the district the difficulties are increased*" (*c*). Yes, indeed they are. For many years past London solicitors have suffered from the peculiar fiction of provincial solicitors that "the title is well known in the neighbourhood" as an excuse for not deducing a marketable title. On one occasion, having insisted upon an abstract of the so-called "well known" earlier title, I received it. It was lengthy and complicated but quite incomplete and unsatisfactory. Having spent some four or five hours perusing it, upwards of twenty special requisitions had to be delivered. About seventy-five per cent. of the replies were "We do not know". Upon a return to the charge, the vendor's solicitors found it necessary to refer to counsel. Eventually a good deal of further information was supplied, a further abstract was delivered; and it became possible to complete. It is said in the article now under consideration, "The fact is that landlords [? landowners] really do own the land that they possess". But, of course, if their titles were registered as "Absolute" it would not take so many weeks to prove their ownership; and the task of conveyancers is to deduce or obtain evidence of title, and not to *assume* a good title.

(2) "It is equally the cue of the advocates of land registration to deprecate the provisions of the property legislation of 1925.

(*a*) See article, The Merits of Registration of Title, by the present writer in *The Conveyancer*, June, 1941.

(*b*) The Demerits of Registration of Title, by H. J. Randall, LL.B., F.S.A., in *The Conveyancer*, March, 1942.

(*c*) The italics are mine.

In truth this beneficent legislation has simplified examination of title immensely." That statement evidently surprised the writer of it almost as much as it will surprise many of the readers of *The Conveyancer*. For he very properly follows it up with details of the unfortunate effects of that legislation. Curiously enough no reference is made to the very difficult and frequent questions which have arisen and still arise in connection with the "transitional provisions". I am content merely to refer those who are further interested to such "simple" cases as *Re Ogle's Estates*, [1927] 1 Ch. 229; *Re Symons* [1927] 1 Ch. 344; *Re Cayley and Evans' Contract*, [1930] 2 Ch. 143; *Re Alston-Roberts-West's Settled Estates*, [1928] W. N. 41, to mention only a few cases which may be cited as illustrations of the terrors of the legislative jungle of 1925.

(3) We next come to The Sad Case of the Unfortunate Agricultural Landowner, whose experience is related as to part on p. 161 of the March, 1942, issue of *The Conveyancer*, and, apparently, as to the remainder in that ever-present help in time of trouble "a letter to *The Times*" (*d*). We are told that "except by the process of extracting the area of each field from the [Land Certificate] plan and adding them up, the owner could not ascertain from his document of title the area of his property, nor could an agricultural valuer find the state of cultivation at the date of purchase".

However, if it is suggested that the normal conveyance of agricultural property can be relied upon to furnish the information just mentioned, then the present writer must have been strangely unfortunate during the past thirty years. It has not been his good fortune to encounter these "gems of purest ray serene". He has long supposed that the unreliability of many plans appearing upon conveyances prepared in the country was due to the fact that they were often prepared by the rough-and-ready process of marking off in pencil on an old conveyance plan a piece of land which was more or less in the position of the piece of land which was being sold, and then making up for this shortcoming in the matter of accuracy by referring to the piece of land in the parcels as "lately in the occupation of William Bloggins and known as Seven Acres field comprising about six and a half acres". Certain it is that in the majority of the cases where I have registered agricultural property it has been found that the plans on the existing deeds were sadly incorrect.

Do I overstate the case? Come now, ye provincial practitioners! Is it not probable that many a conveyance from

(*d*) The date and contents are not given in the article now under consideration.

Joe Diggett to Sam Sluggins was prepared (in times of peace) "of a morning" whilst the said Diggett and Sluggins enjoyed the solace of a pint (or more) of that which cheers, at the local hostelry. D. and S. have made their deal. D. knows S., S. knows D., and the local solicitor knows both. Land Charges Searches? A waste of time. "Why, the whole village would know if Diggett had done owt with Seven Acre field! So just make out the deed, mister, and we'll sign it." What could be more simple. "The title is well known in the neighbourhood." We may assume with confidence that in such cases the local solicitor does not hand the document to his client "with a deep sense of shame that the elegant art of conveyancing should sink to such depths of fatuity and incompetence". Yet these are the words which the writer of "The Demerits of Registration of Title" ventures to apply to the neat and accurate certificates of title and plans which are issued by the Land Registry.

(4) In the last-mentioned article it is stated that the Land Registry "is nothing but an outworn relic of a discarded mode of thought" and that it is "admirably adapted to the needs and methods of the land speculator". Antiquarians will no doubt appreciate the connection between these observations. By others they might be thought only to share the quality of vituperation. The writer has often wondered what Samuel Johnson meant when he said that "an antiquarian is a rugged being"; but he is still unaware. Possibly Johnson meant that antiquarians liked things which were antique and were opposed to innovations. But that would not make sense in this connection, for registration, it is said by our antiquarian, represents "an outworn relic of a discarded mode of thought". In my innocence I had supposed that outworn relics were as dear to the heart of an antiquarian as my brand new Land Certificates with Absolute Title are to me.

(5) Much of the article appears to have no connection whatever with the question whether the system of Registration of Title is satisfactory. The agriculturalist, we are told, "is quite willing to buy land . . . but to sell the land is a calamity". I regret to have to say it, but, really, that statement is as irrelevant as "the flowers that bloom in the spring". No one has suggested lately, so far as I am aware, that anyone who holds land and wishes to retain it should either register his title against his will, or surrender his title deeds. Perhaps it is not appreciated in the provinces that *upon registration of the title the old deeds are usually returned to the owner of the land.*

Let those who dislike registration of title say what can be said against it; but let us not be asked to shed tears for the agricultural

gentlemen who sit firmly ensconced in their agricultural properties, hugging to their manly bosoms their "family treasures" in the shape of parchment deeds. No one seeks to take from them their Lares and Penates, except perhaps their mortgagees—which reminds one that in many cases banks or other mortgagees hold the deeds. Indeed our antagonist in this matter casually mentions a case in which the mortgage existed for sixty years! Yet when one of these agricultural gentlemen does unwind his arms from his beloved documents, and decides to take the cash and let the old farm go, Ah, then, how sad—how sad it would be if, though the old farm stayed, the cash could not be obtained for many months because the title was unsatisfactory!

But do such sentimental "agriculturalists" exist in fact? Or are they but the figments of the lively imagination of truly sentimental antiquarians? Or is the explanation of this provincial repugnance to registration of title to be found in the latin tag "Omne ignotum pro magnifico"!

A SHORT INDEX TO EMERGENCY REGULATIONS AFFECTING PROPERTY.

(*Continued from p.* 125, *ante.*)

COMPANIES.

Regulation 78 (1941 No. 1023) deals with the removal and appointment of officers or directors, transfer of shares, etc., of companies or undertakings of which the control has been taken over under Regulation 55. It is amended by 1941 No. 1775 dealing further with these matters.

1941 No. 1778 authorises the disposal of documents relating to dissolved companies and of transfer deeds.

The Board of Trade may direct that a company incorporated in Jersey or Guernsey shall be registered in England or Scotland (1941 No. 1210). Channel Islands Company Registration Rules have been issued (1941 No. 1229).

EXCESS PROFITS TAX.

Regulations governing procedure on appeals have been issued (1941 No. 1762).

GOVERNMENT STOCK.

1941 No. 1558 includes regulations for the registration and transfer of stock.

LANDLORD AND TENANT.

1942 No. 507 transfers the functions of the agricultural committees under the Agricultural Holdings Act, 1923, s. 12 (2), and Rent and Mortgage Interest Restrictions Act, 1933, Sched. I (g), to the war agricultural executive committees.

OATHS.

Administration of Oaths (Occupied Territories) Order, 1941 (No. 2119), empowers certain officers of His Majesty's forces to administer oaths or take affidavits while serving in occupied territories.

PATENTS, ETC.

Defence (Patents, Trademarks, etc.) Regulations (1941 No. 1780) and Rules (1942 No. 73) provide for control of inventions and designs.

REQUISITIONED LAND.

Regulation 51A (1942 No. 92) enables the Board of Trade to take possession of land for the purpose of working coal and minerals found therewith.

Regulation 50B (added by 1942 No. 801) contains special provisions as to the severance of fixtures in cases where a competent authority is doing work on land as authorised by Regulation 50. It provides that a tenant or mortgagor must give notice of any severance to his landlord or mortgagee, and lays down principles upon which compensation will be based.

The same Order revokes para. 3 (a) of Regulation 50 (see p. 126, *ante*), and provides also that the occupier of land used under Regulation 50 shall not be liable for land left in a dangerous condition as a result of the doing of the work.

SECURITIES, ETC.

1941 No. 1779 amends Regulation 3C of the Defence (Finance) Regulations, 1939, dealing with restrictions on payments outside the sterling area. Para. 3 (a) directs that a personal representative shall be treated as being resident in the territory where the deceased person was resident at the time of his death.

WAR DAMAGE.

War Damage (Business Scheme) (No. 3) Order (1941 No. 1313) makes a number of additions and alterations to the principal order.

War Damage Contribution (No. 3) Regulations (1942 No. 309) revoke the two previous regulations and provide for assessment, appeals against assessment, collection of instalments and their recovery by proceedings in Court or by distraint, etc.

NOTES OF RECENT CASES.

1. *CONVEYANCING AND REAL PROPERTY CASES.*

Emergency legislation — appointment of receiver — several securities with different mortgagees.—The Court has held that the purpose of the Courts (Emergency Powers) Act, 1939, is to protect the debtor and not to secure equality between secured creditors. Consequently, where a debtor has created in favour of several creditors mortgages some of which are ample and some of which are inadequate, the Court will not entertain an application to refuse the appointment of a receiver in favour of a sufficiently secured creditor on the ground that other creditors will have to pursue a personal remedy against the debtor, although the debtor pleaded that he would not then have the surplus rents of the mortgaged property to meet his other creditors. This was the point of the application in *Pritchard-Jones* v. *Le Vaye*, [1941] 3 All E. R. 455, and this decision was reached by the Court of Appeal. It should, however, be pointed out that when Simonds, J., granted leave to appoint a receiver he did so upon an undertaking that no surplus of rents and profits should be applied in reduction of the capital sum owing on the mortgage. Furthermore the question is largely a matter of proof: Greene, M.R., said (at p. 457), "What the debtor has to establish is that the result of an order in his favour, if the Judge is minded to make it, must be something more than a mere equitable distribution of his assets among all his creditors. He must show that the result of the order will be to give him a relief from the misfortunes which the war has brought upon him. The present application is not for the benefit of the debtor. It is for the benefit of other mortgagees. What I have said so far concerns the general scope of the Act as it relates to the case of unsecured debtors (*sic*). As between unsecured creditors, if one is allowed to proceed to execution, he may thereby get an advantage over other unsecured creditors, and refusing relief to the debtor may involve injustice. In the case of secured creditors, on the other hand, there is at the outset an inequality between them. One may have a good security and the other may have a bad one. It is not for the Court to make an order which will give the creditor with the worse security the advantage which belongs to the creditor with the better one. The Court is concerned primarily with the debtor, although it must bear in mind the consequences of its action as regards other creditors. Where there are only unsecured creditors, the position differs from that where there are both secured

and unsecured creditors. In the latter case, there is an existing inequality, which it is no part of the Court's function to remove."

Careful consideration of this judgment will be a guide to the facts properly to be put before the Court in any opposition for leave to exercise a remedy on the part of a mortgagee. It is obvious that where some secured creditors are left to a personal remedy against the borrower by reason of the fact that other secured creditors are realising their security in some form or other it may operate not merely as a hardship to the first class of secured creditors but also to the borrower himself. If, however, he is in a hopeless difficulty he must, as was pointed out by the Master of the Rolls, resort to the Liabilities (War-Time Adjustment) Act, 1941 (see *ante*, p. 31).

Emergency legislation—hire-purchase agreement—determination of agreement by hirer with consent of owner—leave.—Smart Bros. v. *Ross*, [1942] 1 All E. R. 1, goes one stage further in the application of the emergency legislation to hire-purchase agreements than *Bowmakers, Ltd.* v. *Tabor*, [1941] 2 K. B. 1 (noted *ante*, vol. 5, p. 303). In this case the purchaser had returned the furniture to the owners to store on leaving her residence during the war. Later, having fallen behind with her payments she asked the owners to retake the furniture in determination of the agreement on paying her £10. This was a friendly action to determine whether it was possible to retake the furniture without leave under the Courts (Emergency Powers) Act, 1939. The Court of Appeal (Greene, M.R., dissenting) held that it was not, and the learned Judges maintained that in so holding they were following the decision in *Bowmakers, Ltd.* v. *Tabor* (*supra*) and the principle in *Soho Square Syndicate* v. *Pollard*, [1940] Ch. 638 (noted *ante*, vol. 4, p. 433). The contention was that "remedy" for the purposes of the Act must be construed in a wide sense. In *Soho Square Syndicate* v. *Pollard* (*supra*) Farwell, J., had held that although the mortgagor consented leave was necessary for a mortgagee to appoint a receiver. This was a clear case of exercising a remedy. In *Bowmakers, Ltd.* v. *Tabor* (*supra*) the purchaser under a hire-purchase agreement had signed a declaration expressing a desire voluntarily to determine the agreement and to surrender the property, and it was held that this was an exercise of the remedy of retaking for default in instalments and the mere existence of the declaration did not make it anything else. In the instant case there was something more because there was a contract for valuable consideration to surrender on payment of a sum to the purchaser, but the majority of the Court of Appeal still held that it was in fact the exercise of the remedy of retaking.

It is to be noted that *Smart Bros.* v. *Ross* only appears to apply where the owners of the goods would have power under the original agreement to take the goods. If all the instalments are paid to date and there has otherwise been no breach of the agreement it is thought that no question of exercising a "remedy" can arise if the parties agree to determine the agreement, or the purchaser exercises any right to surrender the goods. The net effect of the decision in principle appears to be that if under a contract breach of which has given rise to a remedy, or if a remedy has arisen to enforce a security, it is not possible *without leave of the Court* to obtain the benefit of the remedy by any agreement no matter that it is given for valuable consideration, and no matter that the "remedy" may appear in the form of performance of a new contract. In other words, the agreement must have an implied term that its validity depends on the sanction of the Court. If one may say so respectfully this seems a very common-sense interpretation of an Act designed to protect a party who is always in a weak position. To draw technical distinctions based on the ordinary rules of freedom of contract might well operate to defeat the purposes of the Act. It must, however, be pointed out that this general principle has yet to be enunciated and applied to varying circumstances.

Deed of arrangement — covenant not to sue — surety's rights against the debtor.—Cole and another v. *Lynn*, [1941] 3 All E. R. 502, raised the point on the effect of the covenant not to sue in a deed of arrangement as it affects the rights of a surety against the debtor when the surety has discharged his liability to the principal creditor. The debtor pleaded that the effect of the covenant was to import into the deed of arrangement the bankruptcy rules and to operate as a discharge of all provable debts under section 28 of the Bankruptcy Act. The covenant not to sue included the usual proviso that the covenant was not to affect the rights and remedies of creditors against sureties. In this case a creditor bank not having been paid in full proceeded against the surety who, having satisfied the bank, sued the debtor. The Court of Appeal held that the proviso operated not only to protect the rights of creditors against sureties, but also of sureties, called upon to fulfil their obligations, to proceed against the debtor: following Parke, B., in *Kearsley* v. *Cole*, 16 M. & W. 128, and the principle of *Close* v. *Close*, 4 De G. M. & G. 176.

It is to be noted that this decision does not go further than the point that the proviso excluding the rights and remedies of

creditors against sureties also operates to protect the rights of sureties against the debtor. It does not determine the exact operation of the covenant where it does apply.

Requisition under the Compensation (Defence) Act, 1939—solicitor's costs of the claimant.—Rhodes v. *Secretary for War*, [1941] 3 All E. R. 407, may be shortly noted as holding that although the Compensation (Defence) Act, 1939, s. 2 (1), provides that compensation shall include reasonable expenses of compliance with the requisition it does not include solicitor's costs of negotiating an agreement for the amount of the compensation. If the claim goes for arbitration the tribunal has power to award such costs as it thinks just: section 9 (1). In the course of his judgment Caldecote, C.J., referred to the fact that he was informed that the Secretary for War did usually pay these costs as a matter of an *ex gratia* payment. The point, therefore, seems to be a matter of practice before finally arranging a settlement of the compensation.

Option to purchase—interest in land—compulsory acquisition—injurious affection.—Oppenheimer v. *Minister of Transport*, [1941] 3 All E. R. 485, is of some interest in general principle as well as a new decision on compulsory acquisition. The plaintiff on the purchase of a property had also stipulated that for ten years he should have an option to purchase adjoining land held by the vendor. The Minister of Transport had compulsorily acquired the adjoining property but refused to pay compensation in respect of the option or for injurious affection to the plaintiff's own property. On a case stated to the King's Bench Division the Court (Caldecote, C.J., Humphreys and Asquith, JJ.) held that compensation was payable both for the option and for injurious affection.

In arriving at its decision the Court made four points: (i) "land" for the purposes of the Lands Clauses Consolidation Act, 1845; (ii) an option to purchase is an interest in land; (iii) an option to purchase for the purposes of the Act can be held with land owned by the person entitled to the option under the test laid down in *Cowper-Essex* v. *Acton Local Board*, 14 App. Cas. 153; and (iv) an interest in land for the purpose of the Act can be either legal or equitable.

On the first point there can as a matter of principle be no doubt. Compensation can only be payable to persons having an interest in land, because no person can own land. On the last point there is authority for treating the loss of an equitable interest, *e.g.*, a

restrictive covenant, as injurious affection: *Long Eaton, etc.* v. *M. R. Co.*, [1902] 2 K. B. 574.

An option to purchase was held to be an interest in land for the purposes of the perpetuity rule in *London and South Western* v. *Gomm*, 20 Ch. D. 562, a case on which the Court relied. In the case noted the option to purchase was clearly within the perpetuity rule and therefore might well be held to be within the principle of the earlier decision, provided at least that it was otherwise specifically enforceable. This last point does not appear to have been taken. It was indeed held in *S.E. Ry.* v. *Portland Assoc. Cement Co.*, [1910] 1 Ch. 12 that an option to purchase is specifically enforceable against the original contractor even though made by a corporation having immortal existence, but this case has been much criticised. If the option to purchase does offend the perpetuity rule it is not void as a contract and it may even be enforceable by the intending purchaser against the vendor and his assigns: see *Woodall* v. *Clifton*, [1905] 2 Ch. 527; *Rider* v. *Ford*, [1923] 1 Ch. 541 (where specific performance was not claimed against the original contractor). In other words this decision really only affects the fringe of the problem, namely, the extent to which an option to purchase is really an interest in land.

The essential difficulty concerning options to purchase lies in the fact that they partake of the nature of contracts for sale, for example, for the purposes of the equitable doctrine of conversion: see *Re Marlay*, [1915] 2 Ch. 264; *Re Blake*, [1917] 1 Ch. 18. On the other hand an option to purchase confers no immediate right to any enjoyment of the land at all, as apart from contract a true purchase would, but only to the possibility and subject to various conditions which may never be fulfilled, of the acquisition of the land itself. It is this characteristic, which has something in common with executory limitations, that caused the Court to hold that it was subject to the perpetuity rule. But it is possible to regard the grantor of the option to purchase as trustee of the land for the grantee subject to the latter performing his part of the contract: see II K. & E., 14th ed., 1055. If this latter view is taken the option at all times forms a definite interest in the grantee, at least so long as the land is in the hands of the grantor. It remains a problem for the future.

Settlement—construction—discretionary trust—income paid to trustee after death of life tenant—advancement—jurisdiction to dispense with consent — vested interests and implied cross-remainders.—Cases on the construction of settlements have usually

only a limited application because they turn not only on the actual clauses but also on the meaning of the instrument read as a whole. Furthermore, as each case is so dependent upon the precise words and phrases used it is difficult in a short note to avoid partial inaccuracy. Two cases, however, of some general importance have been decided, and some indication of their nature is here given, but the precise facts must be regarded in any attempt to apply them. In *Re Forster*, [1942] 1 All E. R. 180, a husband had made a post-nuptial settlement on himself for life with protective trusts, the discretion being exercisable in favour of himself, his then and any after-taken wife, and his children and remoter issue. There was a divorce from his then wife who subsequently married an Austrian subject. The settlor married again and had three children, all infants at the date of application, and also became bankrupt. He died without obtaining his discharge. At the death of the settlor the trustees had a sum representing income in respect of which their discretion had not been exercised; a further sum was received after his death. The settlement also contained an advancement clause and it was desired to exercise it, but the power was only exercisable with the consent of the husband and his first wife. The wife had become an alien enemy and her whereabouts was unknown, though the learned Judge refused to presume her dead. The Custodian of Enemy Property did not oppose the exercise of the power.

Morton, J., held that the income received both before and after the death was applicable by the trustee under the discretionary trust if he desired to do so. On this point no authority was cited to the learned Judge which decided the point. In the particular clause there was also a discretion to accumulate. The trustee did not wish to do so, but the learned Judge expressed the view, but not a concluded opinion, that this would be impossible, but here the precise wording of the clause obviously is an imperative question.

With regard to the exercise of the power of advancement it was held that no advancement could be made in the lifetime of the wife without her consent even though the Custodian Trustee obtained an order vesting the property in himself. This decision is of importance irrespective of the complication of the alien enemy. In *Klug* v. *Klug*, [1918] 2 Ch. 67, trustees had a discretion to advance, but one of the trustees was unwilling to exercise the power on the ground that the beneficiary had married without her consent. The Court ordered that the power was exercisable and the consent of the trustee was unnecessary. This case was distinguished on the ground that the principle was that the trustee had refused to

exercise a discretion. In this case the appropriate consent could not be obtained because no communication could be had with the party whose consent was required.

The other cases considered were those of a tenant for life who had become bankrupt and whose interest had therefore vested in the trustee in bankruptcy: the leading case, in which the earlier cases were discussed, is *Re Cooper* (1884), 27 Ch. D. 565. Here the main discussion has been whether the trustee in bankruptcy, or an absolute alienee from the interested party, must consent, and it has been held that such consent is necessary. Whether these decisions apply to advancements made under the Trustee Act, 1925, s. 32, does not appear to have been decided. On the other hand, the decision noted would seem to apply by virtue of section 32 (1) (c).

No attempt seems to have been made to argue that the Court had power to authorise an advancement under the general powers conferred on the Court by section 57 of the Trustee Act. Under this section a sale was authorised without consent: *Re Beale's Settlement*, [1932] 2 Ch. 15; and power was given to raise money for the benefit of a tenant for life: *Re Mair*, [1935] 1 Ch. 562, but it has been laid down in a later case that the proposed transaction must be for the benefit of the settlement generally: *Re Craven's Estate*, [1937] 1 Ch. 431. It is obviously difficult to suggest this of an advancement to a beneficiary not yet having an interest in possession.

(See K. & E., II, pp. 756, n. (*o*) and 588, n. (*z*).)

Re Bickerton's Settlement, [1942] 1 All E. R. 217, did not involve such legal difficulties and depended more upon the construction of the individual settlement. The trustees held upon trust to pay an annuity to the wife of the settlor and subject thereto to apply the income for the maintenance of the children of the marriage until they attained twenty-one and after that date to pay the income among their living children who had attained twenty-one. After the death of the wife the trust fund was to be divided into equal shares according to the number of children, who received the income during their lives and after their death to be paid to the children of such children. One daughter died in the lifetime of the wife and without ever having had issue. Uthwatt, J., held that such daughter had taken a vested interest in her share of the income during the life of the wife. Consequently the income was payable to her personal representatives during the life of the wife.

The difficulty then arose concerning the ultimate destination of her share. There was a clause that if there were no grand-

child who attained twenty-one the trust fund should be held for the benefit of the settlor absolutely, but other children of the settlor had had issue. The learned Judge held that this clause did not introduce the *Lassence* v. *Tierney* rule giving the deceased daughter an absolute interest. He, therefore, held that he could imply in the settlement a gift over in favour of the other children. He held that there was sufficient authority for the possibility of such a construction in the opinion of Lord Russell in *Adamson* v. *Att.-Gen.*, [1933] A. C. 257, at p. 279. His reasoning for applying this possibility lay in the fact that the clause for failure of the beneficial trusts was the only case in which the settlor was to take any interest in the trust fund and in order to give effect to this intention of the settlor it was necessary to imply a cross-remainder.

Another example of interpretation is *Re Bower's Settlement*, [1942] 1 All E. R. 278, where an accruer clause in respect of shares failing to vest was held to operate to give equal shares to the other beneficiaries and not in proportion to the beneficiaries' interest in the trust fund.

The words of the accruer clause were "shall go and accrue by way of addition to the other shares", so that there was nothing expressly to suggest that the accrual should be otherwise than in equal shares.

(K. & E., II, pp. 889, n. (*n*), 902, 1019.)

Charity—relief of the poor.—The cases on what constitute a charitable gift are a steady stream most of which depend a good deal on their particular context, but *Re Central Employment Bureau for Women*, [1942] 1 All E. R. 232, seems to merit special attention. The Central Bureau was an incorporated association which was being wound up. It had established a Central Bureau Loan Fund to which subscriptions were given and it was held that this fund could not be applied to the general purposes of the association. The prospectus of the fund asserted that it was "solely for the purpose of helping educated women and girls to become self-supporting and has no commercial object in view". It served the dual purpose of providing funds to assist women to obtain education and by means of loans to enable them to earn their living. Simonds, J., held that so far as its purpose was educational it was a charity. It has been held that no particular type of education is material provided that it is education. The other purpose he held to be for the relief of poverty within the meaning of the Statute of Elizabeth. He said: "'Poverty', it has been said, is a relative term. I think here that the implication

of the gift to enable the recipients to become self-supporting is a sufficient indication that they stand on the poverty side of the borderline—that is to say, that they are persons who could not be self-supporting, in whatever enterprise they embarked, without the assistance of this fund." It should be observed that the learned Judge himself said that this case was on the borderline. If a fund was established to, say, " assist all sons of millionaires who are not self-supporting to become self-supporting " would this be for the relief of poverty? Or to put it on a more professional basis, would a fund started to " maintain solicitors' articled clerks who have no independent means " be for the relief of poverty?

The learned Judge based his decision on the review of the cases in *Re De Carteret*, [1933] 1 Ch. 103, by Maugham, J. (as he then was). That learned Judge had to consider a fund for allowances to widows and spinsters of small means. Such persons were clearly not destitute and consequently the learned Judge had to hold, on the authorities, that poverty was not synonymous with destitution. This case appears to go farther because a woman or girl may not be self-supporting but by reason of her support from other sources be at least comfortably circumstanced. Incidentally it would be interesting to know whether the " self-support " may be directed towards " self-support " as a millionairess or is confined to " self-support " as a sempstress.

These cases on charity require careful attention because the economic stress of the present age is likely to increase, and perhaps rapidly, the number of these funds directed to assist social projects, many of them not readily falling within the three main categories of religion, education and poverty, in any real sense of the words.

Emergency legislation—foreclosure decree absolute with order for possession—no necessity for leave to proceed.—Wood v. *Smallpiece*, [1942] 1 All E. R. 252, carries the rather troublesome question when leave of the Court is necessary for a mortgagee one stage further. Here the mortgagee had obtained a foreclosure decree absolute (after leave was obtained to institute proceedings) and the order contained the usual clause ordering possession. Possession not having been given the mortgagee sought leave to enforce the order under the Courts (Emergency Powers) Act. The Judge held that leave was unnecessary and this view was upheld in the Court of Appeal. The reasoning was that the Possession of Mortgaged Land (Emergency Provisions) Act, 1939, did not apply, because the effect of the order for foreclosure completely divested the estate from the mortgagor and vested it in the mortgagee,

consequently in enforcing the order for possession he was not recovering possession " by reason of a default in the payment of money ".

Greene, M.R., who delivered the judgment of the Court, pointed out that the effect of the Possession of Mortgaged Land, etc., Act was to limit the mortgagee's common law power to recover possession to cases of default and that where a judgment or order for recovery of possession was obtained for such default it could only be enforced by leave. The practical effect of the Act, therefore, appears to be this: if the mortgagee wishes to recover possession, as distinct from exercising a remedy by sale, etc., he has two courses open to him. He can bring (with leave) proceedings for foreclosure, and if he gets a decree absolute he can recover possession without leave. Alternatively, he can (with leave) bring an action, or more conveniently issue an originating summons under R. S. C., Order V, r. 5A, Order LV, r. 5A, and if he gets the appropriate judgment or order he must then issue a summons for leave to enforce it unless the mortgagor goes out of possession without the order. Whichever way it is looked at the summary remedy where a mortgagee of premises, occupied by the mortgagor, wishes to sell with vacant possession has more or less departed.

Emergency legislation—assignment of equity of redemption—application to appoint a receiver—an ex parte application.—Re Woolwich Equitable Building Society, [1942] 1 All E. R. 284, is a case of very considerable importance to assignees of an equity of redemption because Farwell, J., held that where a mortgagee wishes to appoint a receiver in respect of mortgaged property, the equity of redemption in which has been assigned, he can apply for leave under the Courts (Emergency Powers) Act without making either the mortgagor or assignee a party. The reason for this lies in the natural corollary to *Re National Provincial Bank*, [1941] Ch. 158 (noted *ante*, Vol. 5, p. 217), where it was held that no leave was necessary to sell where the mortgagor was under no personal liability to pay the debt. The Court can only consider whether the person under a liability to pay is able to do so. The mortgagor, of course, had ceased to have any interest in the question and the assignee was not personally liable on the covenant to the mortgagee. What is, perhaps, surprising is that *Re National Provincial Bank* (*supra*) was not applied as a whole because Farwell, J., seems to have been of the opinion that it was necessary to get leave under the Act, though it was not necessary to join either the mortgagor or the assignee, and he directed that the

mortgagee should take out an *ex parte* summons. There appears to be no difference in the wording of the Act with regard to appointing a receiver as there was to selling, so that if no leave was necessary in the one case it would seem that no leave should be necessary in the other. As it is the position is a halfway house. The assignee of the equity of redemption not being a party to the application can scarcely oppose it, but the mortgagee must make the application.

Since the above paragraph was printed two further cases have been reported. First, *Re Leicester Temperance, etc., Building Society's Application*, [1942] 1 All E. R. 580, suggests that the decision of Farwell, J., will go to appeal at least on the point that assignees should not be made parties to the application for leave to appoint a receiver. In this case the original mortgagor assigned the equity of redemption to a company, a third party joining to guarantee the payment of the instalments due under the mortgage. The mortgagees applied for leave to appoint a receiver and on the hearing of the application the Master held that he was not entitled to hear either the mortgagor or his assignee. The summons was adjourned to Morton, J., who directed that mortgagor and the company should be joined as parties to the application. He then held that he would follow the decision of Farwell, J., in *Re Woolwich Equitable Bldg. Socy.* (*supra*) on the point that the company was not a person falling within the Courts (Emergency Powers) Act, 1939, s. 1 (4), as "the person liable to pay the debt or to perform the obligation" and on that ground gave leave to the applicants to appoint a receiver. The learned Judge, however, expressed the opinion that assignees were entitled to be joined as respondents to the application and he regarded any other view as inconsistent with *Re Abbey Road Bldg. Socy.*, [1940] Ch. 239; *Re Hearts of Oak Bldg. Socy.*, [1942] 1 All E. R. 46; *Re Midland Bank, Ltd.*, [1942] 1 Ch. 61. If, however, the assignee cannot get relief as not being a person within the Act it certainly does not appear that a very useful purpose is served in making him a respondent to the application. It is particularly to be noted that the primary liability as between the mortgagor and the assignee is not the material issue. The question is entirely between the applicant, namely the mortgagee, and the respondent whomsoever he may be. On general grounds, as distinct from the specific wording of the statute, it is difficult to see why an assignee of the equity of redemption should be in any different position from that of an original mortgagor who has not assigned his equity, and either these decisions should be reversed on appeal or amending legislation introduced.

The other decision, *Re Royal Mutual Building Society's Application*, [1942] 1 All E. R. 578, also turned on section 1 (4), but in this case the point was whether a person for whom the actual mortgagor is merely a nominee has any right to apply for relief. Simonds, J., held here also that the nominee was the person on whom the liability to fulfil the obligation fell and consequently the other party had no claim to relief. It would be interesting to see this doctrine applied the other way round, that is, the position of the nominee entitling the third party, in effect and through his nominee, to claim relief independently of the capacity, as distinct from the willingness, of the third party to indemnify the nominee. The decision virtually re-asserts that the legal owner is the person concerned and the owner in equity is not owner despite the income tax ruling in *Baker* v. *Archer-Shee*, [1927] A. C. 844, and it is a little curious that the equitable owner should be liable for tax but unable to claim relief from liability to pay a debt. It must, of course, be recalled that both these decisions turn upon the express words of a statute and that, therefore, their inconsistency is more apparent than real. After all, would it be possible directly to enforce any remedy for recovery of the debt against the third party? Here there is a real difference between the assignee of the equity and the party sheltering behind the nominee. The use of nominees has in fact a number of objections and this may be an objection that operates not unfairly.

Mortgage — variable rate of interest — Rent and Mortgage Interest, etc., Act, 1939.—In *Warrilow* v. *Ward*, [1942] 1 All E. R. 366, a mortgagee had stipulated for interest at a rate which after deduction of income tax would supply 7 per cent. The property became subject to the Rent, etc., Restrictions Act, 1939, and it was argued that any increase of income tax after the appropriate date could not increase the actual rate of interest payable. Farwell, J., supported this view and held that the rate of interest was by the Act fixed at that date notwithstanding the agreement for a variable rate and that it thus became the standard rate. Further increases of income tax could be deducted from the standard rate so fixed. In his view he was assisted in this conclusion by *Goldsmith* v. *Orr*, 89 L. J. K. B. 901, where a variable rent was fixed and it was held that the standard rent could not subsequently be raised despite the agreement. The learned Judge did not regard the case as binding on him but was support for his view.

It appears quite clear from the *ratio decidendi* that in the

opinion of the learned Judge the effect of the Act was to fix a standard rate of interest for all mortgages falling within the Act by relation to the interest payable on the date of the operation of the statute. The decision does not, therefore, apply, it would seem, only to those cases in which interest is to vary with the rate of tax but in regard to other cases where the *rate* of interest is to vary. Presumably it cannot apply to cases where there is a proviso for reduction on prompt payment, because the rate of interest is here fixed, though the amount actually payable varies.

Trust—fiduciary relationship of directors—constructive trusts.—An interesting and important decision on constructive trusteeship involving a discussion of the older authorities appears in the decision of the House of Lords (overruling to some extent the Court of Appeal) in *Regal (Hastings), Ltd.* v. *Gulliver*, [1942] 1 All E. R. 378. The case arose out of a company transaction, but it is at least illustrative of a wider general principle.

The facts are rather complicated, but shortly summarised the salient features appear to be as follows. The directors of the Regal formed a company to take over the leases of two cinemas acquired by the company. For this the Regal acquired all the shares in the subsidiary company that were issued. Questions having arisen about a guarantee of the rent by the directors, further fully-paid shares were taken up by three directors personally, by three other persons at the request of the chairman of the Regal, and by the solicitor to the Regal at the request of the directors. Subsequently all these shares were sold at a profit. The directorate of the Regal having changed hands that company sued its former directors and the solicitor to recover the profit made as constructive trustees. The chairman defended on the ground that he did not take any of the shares personally. The solicitor on the ground that he was not in a fiduciary position and had taken the shares at the instance of the company. The remaining three directors maintained that on the facts they were not in a fiduciary position and that the company was not in a position to take up the shares, but that they had done so in order to maintain the property. The facts had never been put before a meeting of the company.

The House of Lords held that (i) as the chairman had not taken any of the shares personally, although some of them had been taken by companies in which he was interested, he was not liable; (ii) as the solicitor had taken the shares at the request of the directors of the company and there had, therefore, been full disclosure, the solicitor was not liable; but (iii) the three

directors had taken the shares personally, there had been no full disclosure to the company and they were liable as constructive trustees; it was on this last head that the decision of the Court of Appeal was overruled.

It must be borne in mind that directors are not always in a fiduciary position to the company: see Bowen, L.J., in *Imperial Hydropathic Hotel* v. *Hampson*, 23 Ch. D., at p. 152; but they can be. The important factor here was that these shares were acquired by the directors "by reason and only by reason of the fact that they were directors of Regal" (*per* Lord Russell at p. 389). It was also pointed out that this principle of constructive trusteeship in no way depends upon fraud or the absence of *bona fides*. Nor does it depend upon the question whether or not the profit would otherwise have accrued to the beneficiary: see *Keech* v. *Sandford*, Sel. Cas. Ch. 61; *Parker* v. *McKenna*, 10 Ch. App. 96. The purpose of the rule appears to be to prevent a person in a fiduciary position from making a profit where his interest and duty may conflict, because the Court may be unequal to ascertaining the true circumstances in a number of cases: *Ex p. James*, 8 Ves. 337, at p. 345 (*per* Lord Eldon).

Obviously every such case must rest to some extent upon its peculiar facts, but this decision should be regarded as a warning by the highest authority that the strict principle of constructive trusts is still very much alive and will be enforced in the arena of the business world.

A case in which the doctrine of constructive trust was not so successfully invoked is *Williams-Ashman* v. *Price & Williams*, [1942] 1 All E. R. 310. Here a solicitor was sued to recover the amount lost through breaches of trust by a trustee. The solicitor had in his possession the trust deed but had not consulted it. The investments were made on the instructions of the trustee, though had the solicitor consulted the trust deed he would have known that a breach of trust was being committed. It was held as a fact that the solicitor acted throughout on the instructions of the trustee and never intermeddled in the trust though he knew that the money was trust money. In the view of the learned Judge the solicitor had acted incautiously, but he could only be held liable if he was under a duty to the beneficiaries under the trust fund.

The basis of the case against the defendant was laid in a passage in *Underhill on Trusts* (9th ed., at p. 548) where he wrote: "Where trust funds come into the custody and under the control of a solicitor, or indeed anyone else, with notice of the trusts he can only discharge himself of liability by showing that the property

was duly applied in accordance with the trusts." The passage was based on *Blyth* v. *Fladgate*, [1891] 1 Ch. 337, where solicitors had dealt with trust moneys in breach of trust and without the direction of their principals. Bennett, J., followed *Mara* v. *Browne*, [1896] 1 Ch. 199, and held the solicitor not liable. The solicitor was not a trustee *de son tort* because he had acted by the direction of the then trustee. The learned Judge expressed this important principle (at p. 313): "An agent in possession of money which he knows to be trust money, so long as he acts honestly, is not accountable to the beneficiaries interested in the trust money unless he intermeddles in the trust by doing acts characteristic of a trustee and outside the duties of an agent." The principle so expressed clearly shows a modification in the rule enunciated by *Underhill on Trusts*. The solicitor is not liable if he acts as the agent of the trustee, provided of course that he is acting honestly.

Forfeiture clause—gift over on alienation or charging—construction.—Re Dennis' Settlement Trusts, [1942] 1 All E. R. 520, illustrates the importance of the precise phraseology in determinable life interests. In this case the life interest was to determine by any act or event "whereby the income of the trust funds would, if belonging to [the life tenant] absolutely, become vested in or charged in favour of some other person or persons or corporation" (cp. K. & E., II, p. 884, cl. 6). By a supplementary deed executed by the settlor and the life tenant the trustees were directed to pay only part of the income to the life tenant and the remainder was to be accumulated and paid to the life tenant only if he was alive at the date when the accumulation was to cease six years thereafter. Farwell, J., held that the omission of the words "or any part thereof" after the words "the income of the trust funds" did not prevent the operation of the forfeiture clause because only part of the income was affected, but it must be borne in mind that the learned Judge's construction was based on this particular document as a whole. The learned Judge then held that the effect of the supplemental deed was to vest part of the income in another person. The life tenant's interest in the accumulated income was contingent only and that subject to this contingency the income was vested in a person or persons other than the life tenant. Hence the forfeiture clause became operative.

It is to be noted that the learned Judge also held, following *Re Brewer's Settlement*, [1896] 2 Ch. 503, that it was not possible in connection with the words used to read into the settlement such words as "the personal enjoyment of the income" or words of

that kind. In order to satisfy the forfeiture clause it was necessary to show that the income had become vested in some other person. (K. & E., II, pp. 576, n. (*o*), and 884.)

Emergency legislation—hiring agreement—requisition.—*Lane* v. *Minister of War Transport*, [1942] 1 All E. R. 526, is too specialised on its facts to warrant lengthy notice. The plaintiff had hired his lorry to the county council on behalf of the Minister of War Transport, the contract containing a term entitling the county council to terminate the agreement "at any time". Some time later a requisition notice was served on behalf of the Minister of War Transport but the original hiring was not in any other way determined. It was held by Farwell, J., that the requisition operated to determine the hiring agreement and was a valid exercise of the power contained in regulation 53 of the Defence (General) Regulations, 1939. The learned Judge was careful to reserve the position which would have arisen had the contract required any form of notice necessary to terminate the hiring. In the facts of the present case he considered that the requisition was sufficient for the purpose.

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2. *LANDLORD AND TENANT CASES.*

By Lionel A. Blundell, LL.M., Barrister-at-Law.

War damage—notice to avoid disclaimer served under wrong section.—The decision of the Court of first instance in *Price* v. *Mann* (1942), 58 T. L. R. 109, where a landlord by mistake served a notice to avoid disclaimer "on the terms of section 10 of the Act" (instead of section 11) must have raised a doubt in the minds of many practitioners, insisting as it did on absolute verbal accuracy, even where the error has deceived no one. That decision has now been reversed by the Court of Appeal (58 T. L. R. 197), the Court laying down that the mistake in referring to a wrong section could not destroy the plain meaning appearing on the face of the document. This is certainly more in accordance with authority: see, for instance, *Doe* d. *Cox* v. —— (1802), 4 Esp. 185; *Doe* d. *Armstrong* v. *Wilkinson* (1840), 12 A. & E. 743.

(*Supra*, p. 217; Woodfall Supplement No. 2, p. 105; 3 K. & E. Supplement, p. 20.)

Multiple lease—Landlord and Tenant (War Damage) Act, 1939 —*question of fact for County Court Judge—functions of Court of Appeal.*—The decision of the Court of Appeal in *Hazel* v. *Edwards* (1941), 57 T. L. R. 609, commented on at p. 72, *supra*, has been reversed in the House of Lords *sub nom. Westminster Bank, Ltd.* v. *Edwards* (1942), 58 T. L. R. 201.

The County Court Judge had decided, after hearing the evidence and inspecting the premises, that the lease was a multiple lease within section 15 of the Landlord and Tenant (War Damage) Act, 1939. Indeed, that was agreed between the parties, the application before the Judge being on the undisputed basis that this was a multiple lease; the main question in issue between the parties appears to have been whether a certain part of the building should be included in the disclaimable portion of the lease, and the County Court Judge had decided on the facts that it was not equitable to include this particular hereditament in the disclaimable portion. On this issue the head lessee appealed to the Court of Appeal. The Court of Appeal took the point, which was not raised by counsel, that the lease was not a multiple lease at all, basing this decision on the fact that the original lease was of a single hereditament. The House of Lords, however, has pointed out that the question whether this was a multiple lease was a question of fact, upon which the parties were *bona fide* agreed and upon which the County Court Judge had pronounced a finding after consideration of the evidence; the Court of Appeal had before it no sufficient material to support its ruling that this was not a multiple lease, and the appeal against the decision of the Court of Appeal was therefore allowed. The proposition may accordingly be stated that the question whether a lease is a multiple lease is a matter of fact for the trial Judge to decide on the evidence.

As to whether the Court of Appeal was right in its view that the words " used or adapted for use " in the definition of " multiple lease " must have relation to the use or adaptation for use contemplated at the time of the granting of the lease, the House of Lords expressed no final decision. As the matter did not arise on the appeal it was left for more mature consideration, but the proposition is clearly doubted by Viscount Simon, L.C., who said that it should not be regarded as settled law and makes this comment: " I should myself have thought that there might be much to be said for the view that the relevant date is not the date when the lease was granted, but the date when the application to the Court was made."

It is not uncommon for the Court of Appeal to take a point of its own motion which is not raised by the parties before it,

and the House of Lords has indicated the circumstances in which that may properly be done. The cases mentioned by Viscount Simon, L.C., are: (1) Where the case is brought before the Court only by collusion or other abuse of process; (2) where absence of jurisdiction is apparent on the face of the proceedings. But where the trial Judge has properly and within his jurisdiction treated a matter as a question of fact and dealt with it on that footing, it is not competent for the Court of Appeal to reopen that matter of its own motion and reverse the Judge's finding. (Woodfall Supplement No. 2, p. 39.)

War damage—multiple lease—disclaimer of lease as a whole.—Herrmann v. *Metropolitan Leather Co., Ltd.* (1942), 58 T. L. R. 145, provides a good example of a multiple lease within the Landlord and Tenant (War Damage) Act, 1939, and also shows in what sort of case the lessee may be permitted to disclaim the lease as a whole; the case is particularly valuable because the *ratio decidendi* of Uthwatt, J., in treating the question whether a lease is a multiple lease as a matter of fact to be decided on the evidence has already been expressly approved by the House of Lords in *Westminster Bank, Ltd.* v. *Edwards* (1942), 58 T. L. R. 201 (considered *supra*).

The demised premises consisted of two adjacent factory buildings connected by a gangway on the second floor; they were demised to lessees for use as a leather factory by one consolidated lease of the entire premises. One of the buildings was destroyed by a fire caused by an incendiary bomb. The lessees, who had been using the two buildings as one entire factory unit, found it impossible to carry on their business in the surviving portion, and were unable to get other premises in the neighbourhood suitable for use in conjunction with it to replace the building destroyed.

In these circumstances Uthwatt, J., held, firstly, that the lease was a multiple lease and, secondly, that it was equitable to allow the lessees to disclaim the lease as a whole.

By section 24 of the Landlord and Tenant (War Damage) Act, 1939, a multiple lease means a lease comprising buildings which are used or adapted for use as two or more separate tenements. In this case the buildings were used as one tenement, but Uthwatt, J., held that "adapted for use" did not, as was argued before him, mean that some physical work of alteration had been carried out in respect of the buildings, but meant "reasonably suitable for use" as two or more tenements in the

ordinary course of business. Construing the words in this sense, the learned Judge held this to be a multiple lease.

On the second question, the material provision of section 15 of the Act is that if the Court is satisfied, having regard to the extent of the war damage and all the circumstances of the case, that it is equitable to allow the lease to be wholly disclaimed, then in a case where a notice of disclaimer has been served the Court shall order that the notice of disclaimer shall have effect; alternatively, where the Court takes the view that it is equitable to allow disclaimer only as regards one or more of the separate tenements comprised therein, it will make an order giving effect to such partial disclaimer. In this case Uthwatt, J., reviewed the difficulties in the way of the lessees carrying on their business in the surviving building in conjunction with any other premises, and found that it was not reasonably practicable to obtain premises in the neighbourhood suited for the purposes of the lessees' business; he accordingly held that it was equitable to allow the lessees to disclaim the lease as a whole.

(Woodfall Supplement No. 2, p. 39.)

Wife living apart from husband in house belonging to husband —whether tenancy constituted—procedure for recovery of possession.—Bramwell v. *Bramwell* (1942), 58 T. L. R. 148, introduces a kind of quasi-tenancy which is of some importance to practitioners.

A husband left his wife but permitted her to live in his house. The magistrates made a maintenance order of £1 12s. per week in favour of the wife but intimated that so long as the husband allowed his wife to live in the house he need not pay more than £1 per week. Later, the husband gave his wife notice to quit, which she disregarded. He continued to accept rent for a time and then issued a county court summons for possession.

The County Court Judge found that the parties had by their conduct created a contract of tenancy between them at a rent of 12s. per week, that the notice to quit was waived by subsequent acceptance of rent, and the tenancy was protected under the Rent and Mortgage Interest (Restrictions) Act, 1939. He therefore declined to make an order for possession.

This decision is extraordinary because, if there was a tenancy between the husband and wife it would, as the County Court Judge held, be protected under the Rent Acts, but the effect of this is, by section 15 of the Act of 1920, that after the service

of notice to quit determining the contractual tenancy the wife became a statutory tenant, and an action may be brought claiming possession from a statutory tenant without any further notice to quit being given: *Aston* v. *Smith*, [1924] 2 K. B. 143.

However, the Court of Appeal dealt with the case from a different angle. In their view the relationship of landlord and tenant could not be inferred from the facts, and they granted an order for possession on this basis. Actually it is not clear from the report why their Lordships took this view. There is no intrinsic reason why a husband who has left his wife should not grant her a tenancy of the house for some consideration by way of rent. The test would seem to be, did the husband expressly or impliedly grant to the wife *exclusive* possession of the house for a determinate term, for example, a weekly tenancy? This is a question of fact, and it does not appear from the report cited above that there was no evidence at all upon which the Judge could have so held. Actually we are told nothing of the details of the arrangement between the parties upon which this question turned. It appears, however, that the Court of Appeal reviewed the facts upon which the County Court Judge had held there was a tenancy, and decided that the relationship of landlord and tenant could not be inferred from the facts (see *per* Lord Greene, M.R.). The judgment is so short that it is not clear to the writer upon what basis the Court reached this finding. However, in view of the criticism of the county court decision already expressed by the writer, it is clear that the appeal was rightly allowed.

A very interesting point was, however, raised by Goddard, L.J. An action for the recovery of land is undoubtedly in the nature of an action for tort. Even between landlord and tenant the basis of the action is that the defendant's contractual (or sometimes statutory) right to possession has ceased and the defendant has become a trespasser; the claim for mesne profits so frequently coupled with the claim for possession is an action for damages in respect of that occupation which has become unlawful since the right to possession ceased. By section 12 of the Married Women's Property Act, 1882, husbands and wives cannot as a general rule sue one another in tort, section 17 providing instead the remedy of an originating application for decisions on questions which arise between them as to property. It seems that in cases such as this between husband and wife, the claim for recovery of possession should be brought before the county court by originating application under Order VI, r. 4 (1), of the County Court Rules, and not by action. The case was not dealt with on this footing as the argument had not been put forward in the county court, but

Goddard, L.J.'s, ruling on this point should be noted and followed in cases of this kind.

Rent and Mortgage Interest (Restrictions) Acts—rate of interest variable with income tax.—Warrilow v. *Ward* (1942), 58 T. L. R. 183, actually a case of mortgage interest, must be considered here because it decides a point under the Rent and Mortgage Interest (Restrictions) Acts which is just as likely to arise in respect of rent.

Mortgage interest was agreed at such a rate as after deduction of income tax should yield the clear rate of 7 per cent. per annum. On September 1, 1939, with income tax at 5s. 6d. in the £, the effective rate of interest was 9.65 per cent. per annum. Since then, of course, the rate of income tax has increased. It was held by Farwell, J., that as from September 1, 1939, the rate of interest could not be increased beyond the amount which was then payable, so that the interest was stabilised at the rate of 9.65 per cent. notwithstanding subsequent increases in the rate of income tax.

It is clear that the same principle will apply where rent is by the contract of tenancy made to vary in this way: it will be stabilised at the rate actually payable on September 1, 1939, which will constitute the standard rent.

Comparison may be made with the case of *Goldsmith* v. *Orr* (1920), 36 T. L. R. 731, where there was an agreement made prior to the Act for an increase of rent which was to become effective on a date after the Act came into operation; this was held to be an increase within the meaning of the Act and therefore irrecoverable.

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3. *MISCELLANEOUS CASES.*

Company law—subscription for shares not a purchase.—A case of interest to all practitioners is *Re V. G. M. Holdings, Ltd.* (1942), 58 T. L. R. 131. By section 45 of the Companies Act, 1929, it is not lawful for a company to give whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security, or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company. It has been held by the Court of Appeal that a subscription for shares in a company is not a "purchase" of shares within this section, and therefore a company may lawfully provide money to be used as a subscription for its own shares.

Defendant prisoner of war in Germany—service of writ cannot be dispensed with.—The case of *Vandyke* v. *Adams* (1942), 58 T. L. R. 129, should be noted as of importance in relation to all actions concerning land, whether between mortgagee and mortgagor, landlord and tenant or otherwise, involving as it does a practice point of general application. Farwell, J., has held that where the defendant is a prisoner of war in enemy hands, substituted service may not be made upon the firm of solicitors who used to act for him (but hold no power of attorney) for there is no certainty or even reasonable probability that such service would be effective to bring knowledge of the writ to the defendant; and the case is not one for dispensing with service of the writ under Order IX, r. 14B, because the defendant, though in a sense resident in enemy territory, cannot be described as an enemy in any sense of the word at all.

A few observations may be made as to the application of this decision to an action for the recovery of land. A notice to quit need not necessarily be served personally on the tenant: it may, for example, be left at his dwelling-house with his wife or servant (see cases cited in *Woodfall*, 24th edition, p. 978). But service of the writ will be governed by *Vandyke* v. *Adams*, except where advantage can be taken of Order IX, r. 9, whereby if the possession is vacant and service cannot otherwise be effected, a copy of the writ may be posted upon the door of the dwelling-house or other conspicuous part of the property. A similar provision is contained in the County Court Rules, Order VIII, r. 24. Generally speaking, the premises cannot be regarded as vacant if the defendant has left any of his goods and chattels thereon, but in the circumstances under consideration, if it appear by the affidavit in support of the application to the Master that the prisoner of war was previously tenant, that his tenancy has determined and that there was nobody in or upon the premises when a copy of the writ was posted thereon, it may be that service in the special form under this rule would be allowed as good and sufficient service. If the prisoner of war has left someone in possession although his tenancy is now ended, it may be suggested that such person should be named as defendant in the action for recovery of possession, in place of the prisoner of war. Direct authority on this is not known to the writer, and it would be interesting to know whether any readers have had actual experience of the point in practice. Compare the position of an executor *de son tort* (Cole, Ejec. 85).

Evidence—serving soldier party or witness—Coppin v. *Bush, Gallagher* v. *Stafford* (1942), 58 T. L. R. 206.—These cases should be noted in connection with any case where a serving soldier, airman or sailor, is a party or witness. *Gallagher* v. *Stafford* shows that the Court will prefer to have his evidence taken before an examiner rather than order indefinite postponement of the case. In *Coppin* v. *Bush* the plaintiffs, in order to avoid delay, offered to accept a statement by the soldier defendant as having been made on oath and to accept it as evidence, subject to comment. The Court of Appeal preferred this course to the alternative of postponement until the defendant returned.

Where an examiner is appointed, any suitable person may be selected, for example, an officer of the soldier's unit, or perhaps even the shorthand writer.

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4. *INCOME TAX CASES.*

By Leonard Stein, Barrister-at-Law.

[The decisions selected for notice are not necessarily the most important from the standpoint of the income tax practitioner, but those most germane to the subjects with which *The Conveyancer* is primarily concerned.]

Income tax—annuity—whether beneficiary accountable for tax recovered.—Re Jubb; Neilson v. *King and Others*, 20 A. T. C. 297, was a case in which a testator, in disposing of his residuary estate, had directed his trustees to pay to his daughter "the net sum of £700 per annum by equal quarterly instalments, so far as possible on the usual quarter-days, free of death duties and all other taxes and duties whatsoever present or future". The question which arose was whether the beneficiary, having obtained repayment of tax, was entitled to retain the amount repaid, or whether she must account for it to the trustees in accordance with the well-known rule in *Re Pettit*, [1922] 2 Ch. 765. No claim had been made upon the beneficiary by the trustees, but the persons interested in the residue took the view that the trustees had rights which it was their duty to exercise, and the Court was asked to decide whether the rule in *Re Pettit* applied. Farwell, J., had no difficulty in coming to the conclusion that it did, holding that there was no material distinction between the two cases and that the beneficiary was not entitled to invoke the decision in

Re Jones, [1933] Ch. 842, which turned on the fact that what had been given to the beneficiary was not a tax-free annuity strictly so called, but an annuity of such a sum as would, after deduction of tax, leave a stated amount. The distinction was recognised by the Court of Appeal in *Re Maclennan*, [1939] 1 Ch. 750 (see note in *The Conveyancer*, September, 1939, at p. 105), where both *Re Pettit* and *Re Jones* were explained and approved.

Testamentary annuity—whether tax free.—In *Re Skinner, Milbourne* v. *Skinner*, [1942] 1 A. E. R. 32, Morton, J., took occasion to summarise the rules governing the deduction of tax from testamentary annuities—rules, he observed, which seemed in many cases to be imperfectly understood by testators and trustees. In the case before him a testator had directed the payment to C. B. S. of "the yearly sum of £500", and, after making other gifts, had further directed his trustees "out of the surplus income of my estate to pay C. B. S. for his life such a sum not exceeding £500 per annum as will bring his income up to £1,000 per annum, any deficiency in any one year to be made up out of the surplus in succeeding years". The testator died in 1916, but it was not until 1941 that the trustees took out a summons asking whether, on the true construction of the will, C. B. S. was entitled to receive the two annual sums, or either of them, without deduction of tax. In answering this question the learned Judge epitomised the law on the subject. First, an annuity is not to be paid free of tax unless there is a direction to that effect in the will. Secondly, it makes no difference that the annuity is payable out of income which has reached the trustees under deduction of tax. Thirdly, the use of the words "clear annuity" is not a sufficient direction, nor is the use of the words "free of all deductions", unless it is clearly expressed on the face of the will that the deductions referred to include income tax. As to the words "free of all deductions", the learned Judge cited the decision in *Re Wells' Will Trusts; Public Trustee* v. *Wells*, [1940] Ch. 411—see note in *The Conveyancer, June*, 1940, at p. 424. Applying the principles he had propounded, the learned Judge had no hesitation in deciding that neither of the two annual sums to which C. B. S. was entitled under the will was payable free of tax.

Surtax—settlement—settlor having an interest—Finance Act, 1938, s. 38 (3), (4).—The effect of the well-known provisions of sub-section (3) of section 38 of the Finance Act, 1938, is, briefly stated, that undistributed income arising under a settlement will be treated, for income tax purposes, as income of the settlor, and will not, therefore, be deductible in the computation of his total income for surtax purposes, if the settlor has an interest in any income arising under, or the property comprised in, the settlement. Sub-section (4) goes on to provide that a settlor shall be deemed to "have an interest" if income or property arising under or comprised in the settlement "is or will or may become payable to or applicable for the benefit of the settlor or the wife or husband of the settlor in any circumstances whatsoever". This sweeping language is qualified by certain provisoes, which are, however, irrelevant to the recent decision in *Tennant* v. *C. I. R.*, [1942] T. R. 33, with regard to the construction of the words "the wife or husband of the settlor". The facts, so far as material to this point, were simple. In 1934, X, at the time a married woman, executed a settlement of certain property, reserving power to revoke any of the trusts concerning all or any part of the settled property and to direct that the property to which the revocation extended should be held in trust "for such persons as she may think proper . . . but always excluding the settlor". X's husband died in 1935. The first year of assessment to which the Finance Act, 1938, applies is 1937–38, but after the husband's death it was sought to treat undistributed income arising under the settlement as income of X on the ground that she might remarry, and that, if she did, it would be open to her to exercise the power reserved to her by the settlement for the purpose of declaring new trusts in favour of her husband. It was contended on behalf of X that the words "the wife or husband of the settlor" in sub-section (4) of section 38 must be taken to refer to a wife or husband in existence in the year of assessment in which the income arose. The decision in the Court of Appeal in *C. I. R.* v. *Gaunt*, [1941] 2 A. E. R. 662 (see note in *The Conveyancer*, Sept. 1941, at p. 74), was invoked in support of this contention, but Lawrence, J., decided in favour of the Crown, holding that, notwithstanding that the settlor was a widow, it was sufficient that circumstances might arise in which the property would be taken by a husband of hers. The decision provides yet another warning of the pitfalls to be avoided by a settlement designed to enable income to be accumulated without being caught by sub-section (3) of section 38 of the 1938 Act.

Surtax—" arrangement " constituting a " settlement "—settlor having an interest—Finance Act, 1938, s. 38 (3), (4); s. 41 (4) (b).—The main interest of the decision in *Burston* v. *C. I. R.*, [1942] T. R. 21, lies in the application given to the definition of " settlement " in section 41 (4) (b) of the Finance Act, 1938. For the purposes of Part IV of that Act, " the expression ' settlement ' includes any disposition, trust, covenant, agreement or arrangement, and the expression ' settlor ', in relation to a settlement, means any person by whom the settlement was made ". Part IV of the Act includes, among other provisions designed to prevent tax avoidance through the medium of settlements, those of section 38 (3), by which undistributed income arising under a settlement is to be treated as income of the settlor, if he has, within the meaning of section 38 (4), an interest in any income arising under or property comprised in the settlement.

The somewhat complicated facts may be summarised as follows. B. formed a trust company with an issued capital of £500, divided into 490 5 per cent. cumulative preference shares of £1 each and ten ordinary shares of £1 each. The preference shares were issued to B. and the ordinary shares to F., Ltd., a company outside the scope of the companies surtax legislation. B. entered into a deed of covenant under which he became liable to pay, and in fact paid, large annual sums to the trust company. This may be described as the first series of transactions. Then came a second series. The company increased its capital by issuing 20,000 deferred ordinary shares of a shilling each. The issue was made on the terms that, subject to the preference shareholders' right to a 5 per cent. cumulative dividend, and to the ordinary shareholders' right to a non-cumulative dividend up to 10 per cent., the remaining profits should be available for dividends on the deferred ordinary shares, and that, subject to the repayment of the preference and ordinary share capital, the holders of the deferred ordinary shares should be entitled to the surplus assets in a winding-up. A sum of money was irrevocably settled by B. on trust to accumulate the income for the benefit of his children, the money to be invested as directed by B., who proceeded to direct that £1,000 should be invested in the purchase of the 20,000 deferred ordinary shares in the trust company. At the same time B. obtained an option on 100,000 deferred ordinary shares and an undertaking by the company to increase its capital to the requisite extent in the event of his exercising the option. Finally, B., who already held the preference shares, acquired the ordinary shares originally issued to F., Ltd.

On these facts it was contended by the Crown that the undistributed income arising to the trust company in the form

of B.'s annual payments under his deed of covenant was income arising under a settlement in which B. had an interest and accordingly fell to be treated as income of B. under section 38 (3) of the 1938 Act. The main contest was on the question whether the whole of the transactions mentioned above constituted an "arrangement" amounting to a settlement within the meaning of section 41 (4) (b) of the Act, or whether, as the taxpayer contended, each of the two series of transactions ought to be regarded as a distinct and separate "settlement". If the latter view was correct, it would follow that, on the facts as they stood in the year of assessment, the settlor, notwithstanding his option on the 100,000 deferred ordinary shares, could not be said to have an interest in the settlement under which the income consisting of the annual payments arose. Lawrence, J., took the view that the two series of transactions must be regarded as together constituting an arrangement amounting to a "settlement" within the meaning of section 41 (4) (b). If so, B. must be treated as the settlor, and he clearly had an interest within the meaning of section 38 (4), which requires a settlor to be treated as having an interest if income arising under or property comprised in the settlement may become payable to him in any circumstances whatsoever. A subsidiary question which arose was whether the interest extended to the whole of the income or only to five-sixths of it, the argument being that, if B. exercised his option to take up 100,000 deferred ordinary shares, this would still leave him with only five-sixths of those shares, 20,000 being held by trustees on irrevocable trusts for the benefit of B.'s children. On this question of quantum the case was remitted, on terms, to the Commissioners.

The definition of "settlement" in section 41 (4) (b) of the Finance Act, 1938, is similar to that in sub-section (9) (b) of section 21 of the Finance Act, 1936, which deals with settlements in favour of children, and *Burston* v. *C. I. R.*, above, is the most recent of a line of cases of which the first was the decision on section 21 (9) (b) of the 1936 Act in *Copeman* v. *Coleman*, 22 T. C. 594.

5. *WILL CASES.*

By S. J. BAILEY, LL.M., Barrister-at-Law.

Administration of assets—future contingent liability—distribution of estate.—If an executor, who has notice of a contingent claim against the deceased's estate, distributes the assets, he is not ordinarily absolved thereby from liability to meet that claim in case it subsequently matures. If he desires to avoid such liability, he should distribute under an order of the Court: see *Re King*, [1907] 1 Ch. 72. The question arises whether, in making such an order, the Court will direct a sum to be set aside out of the assets, sufficient to cover the contingent claim. In *Re King*, *supra*, it was said not to be the practice of the Court to direct assets to be retained for the contingent claimant's protection. It was said also that there is no need, as a rule, to do so for the executor's protection, since a distribution under the order of the Court will itself effectively exonerate him from any further liability *qua* executor. This reasoning was subsequently adopted by Crossman, J., in *Re Johnson*, [1940] W. N. 195 (noted *ante*, vol. 5, pp. 70—71), a chamber summons reported by leave of the Judge. In that case the contingent claim, of which the executor had notice, derived from an *inter vivos* settlement whereby the testator had transferred certain investments to trustees upon trust to pay the income to his wife for life and had covenanted to supplement the income in any year in which it should fall below £6,000. For some years before his death the income in fact fell below that figure, and this state of things was likely to continue. Nevertheless, in the administration of his estate, his liability upon the covenant ranked, of course, as a contingent claim, and the learned Judge directed distribution of the assets without setting aside any fund to meet it. This meant that, for future deficiencies of income, the trustees of the settlement would have to proceed against the beneficiaries under the testator's will—principally the King Edward Hospital Fund for London.

The same question has now arisen, before Simonds, J., in *Re Arnold, Calvert* v. *Whelan*, [1942] W. N. 78; [1942] 1 All E. R. 501. Here, however, the future claims of which the executor had notice were certain life annuities which the testator had covenanted to pay. It was therefore less clear that they should be treated as *contingent* claims; for the only contingency involved was the survivorship of the annuitants. The learned Judge emphasised this point, and concluded that it is not the practice of the Court, in such a case, to authorise distribution without setting aside an

adequate sum to meet the annuities. The judgment emphasised, moreover, the confusion and trouble which was likely to be caused were the annuitants left to claim their annuities direct from the testator's various legatees; and it was pointed out that in *Re Johnson, supra*, there had been no argument on behalf of the creditors, and that that decision was perhaps influenced by the fact that the contingent creditors there were not likely to experience any difficulty in obtaining satisfaction from the principal legatee.

It would thus appear that, although as a general rule the Court will order distribution without making provision for future contingent liabilities, this practice will not necessarily be followed if it is likely to cause extreme inconvenience to a contingent creditor whose claim is reasonably certain.

Construction—" child or children "—Legitimacy Act, 1926.—On general principles of construction, a gift to " children " ordinarily means only *legitimate* children. The Legitimacy Act, 1926, however, provides that in certain circumstances a person born illegitimate is legitimated by the subsequent marriage of his parents. Section 3 (1) (b) of that Act enacts that a person so legitimated shall be entitled to take " under any disposition coming into operation after the date of legitimation . . . in like manner as if the legitimated person had been born legitimate ". Section 10 (2) adds that nothing in this Act shall " affect the operation or construction of any disposition coming into operation before the commencement of this Act ".

Re Hoff, Carnley v. *Hoff*, [1942] W. N. 90; [1942] 1 All E. R. 547, concerned the will of a testator who died in 1861. By this will, property was devised to A for life and after his decease to such " child or children " of A as A should by deed or will appoint. In 1934, A married the mother of Z, his illegitimate son. On the same day, after the marriage ceremony, A executed a deed whereby he purported to appoint the above property to Z. Clearly Z was not a legitimate child in 1861, when the will which conferred this special power to appoint among " children " came into operation. He was clearly legitimate, however, when the power of appointment was exercised in 1934. The question whether that appointment to him was valid turned, therefore, upon the question whether the will of 1861 or the appointing deed of 1934 was the " disposition " for the purposes of sections 3 and 10 of the Act of 1926. Farwell, J., decided that the will of 1861 was the " disposition ", within the meaning of the Act, and held accordingly that the

appointment was invalid. It is true that, for the purposes of the Act, "disposition" is defined (section 11) as "an assurance of any interest in property by any instrument whether *inter vivos* or by will". It is true also, as was pointed out in argument, that an appointment under a special power operates, in effect, to create a new estate and to divest the estate which, up to then, is vested in the persons entitled in default of appointment: see *Re de la Bere's Marriage Settlement Trusts*, [1941] Ch. 443. But the governing disposition here was the will of 1861, which had conferred this special power and had prescribed its limits. Consequently, since Z was not a "child" of A within the meaning of that will, he was not an object of the special power which it created, and the appointment to him was necessarily void.

Intestacy—"personal chattels"—farm stock—Administration of Estates Act, 1925, *ss.* 46, 55.—Under the modern law of intestate succession a surviving spouse is entitled, *inter alia*, to the "personal chattels" of the deceased. For this purpose, section 55 of the Administration of Estates Act, 1925, defines *personal chattels* to mean "carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals . . . wines, liquors and consumable stores". The definition concludes with the statement that personal chattels "do not include any chattels used at the death of the intestate for business purposes . . .". The emphatic exclusion, from this definition, of chattels used for business purposes, clearly implies *inter alia* that any chattels which a deceased intestate employed in the course of carrying on business as a farmer do not pass to his surviving spouse as "personal chattels". *Re Ogilby, Ogilby* v. *Wentworth-Stanley*, [1942] W, N. 90; [1942] 1 All E. R. 524, has raised the question whether there are not some farmers whose farming activities do not constitute a "business" for the purposes of the Act. At the time of her death, the intestate was farming some 180 acres of land, comprising the home farm attached to a large residence, which had belonged to her first husband (a clergyman), and an adjoining holding which he had added to it. It appears that these farms were primarily devoted to the breeding of cattle, a matter in which she (and her deceased husband before her) had taken a special interest. At her death, the live and dead stock on the farm was valued at some £1,500. It was contended that she had farmed as a hobby, not as a business, and that she had consistently farmed

at a loss. Nevertheless, Simonds, J., decided that this was a farming " business ". Consequently, her second husband (who survived her) had no claim to the live and dead stock as " personal chattels " on her intestacy. The learned Judge recognised that it might be difficult to draw the line in cases of farming on a more limited scale. And he indicated, by way of illustration, that an intestate who " keeps a cow or two for her own use, or it may be a pig or it may be humbler domestic animals ", could not perhaps be said to keep them for " business " purposes. Unfortunately, however, it appears that no guiding principle has yet been formulated with which marginal cases may be tested. Decisions upon the meaning of " business " in other contexts, such as the Bankruptcy Act, were held to be irrelevant. Meanwhile, one may ponder the question whether a domestic fowl-run or rabbit-hutch houses " personal chattels " within the meaning of the Administration of Estates Act, 1925, and whether even those inhabitants maintained primarily for home consumption should be regarded as used for " business purposes " if surplus eggs or stock are customarily sold.

Probate—conditional will—revocation clause—joint will—grant of administration with joint will annexed.—Two sisters, M. and P., made a joint will in April, 1933. This will recited that each of them then intended soon to make a separate will in favour of the other. It also recited that it was not intended to operate until both sisters should be dead, whereupon all property left by the survivor should go to certain specified charities. There was also an indication that, on the death of one sister, the surviving sister was to be free to make a different will should she so desire. In May, 1933, each sister duly made a separate will in favour of the other. Unfortunately, however, each will was made on a printed form which contained a clause purporting to revoke all previous wills. M. died in November, 1940. P. died a fortnight later. Such were the facts of *In the Estate of O'Connor*, [1942] 1 All E. R. 546. Admittedly, on M.'s death, her property had devolved upon P. her sister, as prescribed by her separate will. When P. died, however, the destination of P.'s property (including that acquired by her under M.'s will) was disputed. Although it was clear that they had intended it to be governed by their joint will, there was the difficulty that P.'s separate will, of later date, had included a general revocatory clause. Nevertheless, Hodson, J., was able to hold that the joint will stood. A general revocatory clause does not affect a prior testamentary paper " provided that

the Court is satisfied that it was not the deceased's intention to revoke that particular legacy or benefit"—see *Gladstone* v. *Tempest* (1840), 2 Curt. 650, 653—654. In order to ascertain the deceased's true intentions on the matter it is permissible to examine all the circumstances of the case existing at the time when the revoking will was made. In the present case, the circumstances of the two sisters, and their plan set out in their joint will, showed that each separate will was intended to be conditional upon the testatrix dying before her sister. Consequently, P.'s separate will never came into effect, and so was unable to revoke the joint will. The sole executor of the joint will having renounced probate, a grant of administration with the joint will annexed was made in favour of two residuary legatees.

CORRESPONDENCE.

Form 13—War Damage.

The Editor,

Dear Sir,

In connection with the Precedents relating to the sale of war damaged property included in the December, 1941, issue of *The Conveyancer and Property Lawyer*, it may be of interest to you to learn of an opinion which has been expressed by the War Damage Commission concerning section 9 (7) of the War Damage Act, 1941.

I am dealing with the transfer of properties belonging to a company in liquidation to its parent company by way of return of capital. One of these properties has suffered war damage, and although the Commission has not as yet determined the kind of payment which it will make, the property has been practically demolished, and it is thought that a value payment will be made.

A copy of the draft Conveyance and Assignment was submitted to the Commission asking for consent in writing to the assignment of the value payment.

This draft contains:—

(a) a recital that the parent company is entitled to a transfer of all the assets of the subsidiary company, including (with the consent of the Commission) the value payment as aforesaid,

(b) a recital in the form of the fourth recital to Precedent 2, *viz.*, that by notice in writing dated —— the Commission approved the assignment of the said value payment to the parent company, and

(c) clause 2 of this Precedent 2.

The Commission have expressed the view that their approval of an assignment cannot be given until it has been executed. They, therefore, suggest that the recital mentioned in (b) above (being the fourth recital in Precedent 2) should be omitted.

The Commission, however, stated that they would be prepared to give their approval of the assignment upon being informed that it had been executed in the form of the draft submitted and of the date inserted in the original Assignment.

It would, therefore, seem that in the case of a conveyance of damaged property with an assignment of a value payment, the document cannot include a recital that the Commission had previously given their consent to the assignment of the value payment, as such written consent will not be forthcoming until the deed of assignment of the right to receive the value payment has actually been executed. This has some bearing on note (*e*) to Precedent 2, which states that the fact that the approval of the Commission has been obtained should be recited in order to show that the assignment will be effective under section 9 (3) of the Act.

It is also suggested that in view of the wording of sub-section (7) of that section, the wording of clause 2 of Precedent 2 might with advantage be amended so as to read " All that the right to receive the value payment payable in respect of the said property ".

Yours faithfully,

E. C. HEWETT.

[The Editors thank Mr. Hewett for his constructive and helpful letter and hope that subscribers will not hesitate to send any practical information which they may have with regard to War Damage. It would be so much more helpful to practitioners if the War Damage Commission could see their way to approve drafts before execution, as otherwise supplementary deeds may become necessary to meet their rulings.

THE LIBRARY.

The Solicitor's Handbook of War Legislation. Consolidated Supplement. By S. M. KRUSIN, B.A., and P. H. THOROLD ROGERS, B.A., B.C.L. Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.; Solicitors' Law Stationery Society, Ltd. £4 net.

THIS Supplement should be of great assistance to all practitioners, whether they have or have not the original Handbook. Since the original Handbook was printed the flow of legislation and statutory rules and orders has continued steadily. Of statutes alone upwards of forty new Acts are dealt with in this work, which includes such very important Acts as the War Damage Act, 1941, Courts (E. P.) Amendment Act, 1940, Landlord and Tenant (War Damage) (Amendment) Act, 1941, Liabilities (War-Time Adjustment) Act, 1941, National Service Act, 1941, Goods and Services (Price Control) Act, 1941. The Index alone occupies upwards of eighty pages and the work itself (including three Appendices) 1152 pages.

No work dealing with emergency legislation can be absolutely up-to-date; but the Publishers have done what is possible in this connection. With the

Supplement is supplied a Supplementary List of New Acts, Orders and Regulations passed or made since the date when this Supplement was printed. Moreover, the Publishers state that they propose to send to subscribers monthly lists of new Acts and Statutory Rules and Orders, free of charge. This will, we think, be an extremely useful service.

Those who contemplate the donation to the cause of paper salvage of the earlier Supplements will desire to know whether they can safely do this after purchasing the consolidated Supplement. Mr. Rogers, in the Preface (p. iv), answers this question by saying that where Acts or Orders have been repealed or revoked they are not reprinted, but references to the earlier Supplements are inserted. It will therefore only be necessary to keep the earlier Supplements for the purpose of referring to such Acts or Orders.

The valuable Preliminary Notes by which the text of the statutes was preceded in the original Handbook are also to be found in the case of the new Acts which are dealt with in this Supplement. Many of the Acts are heavily and usefully annotated. The observations at pp. 279 and 357 and the authorities there cited should enable most problems concerning "residence" to be solved.

The work is well done and the authors have exercised imagination and displayed practical knowledge of the problems which are likely to arise out of the emergency legislation. They have not hesitated to express their views concerning certain difficult problems which arise out of the wording of various statutory provisions. Very regretfully, the section dealing with Part I of the War Damage Act must be excluded from the remarks above made. No doubt the concise annotation of such a measure is a matter of considerable difficulty; but our confidence in the annotation of that Act is somewhat shattered by the citation at p. 1090 of *Gutteridge* v. *Maynard* (1834) and *Haskell* v. *Marlow*, [1928] 2 K. B. 45, in relation to the exception of fair wear and tear. The last-mentioned case was definitely overruled by the Court of Appeal in the widely known case of *Taylor* v. *Webb*, [1937] 2 K. B. 283, and with it the earlier *dictum* in *Gutteridge* v. *Maynard* was also swept away. Accordingly the statement of the law on p. 1090 (note 3) is incorrect and should be corrected in the next Supplement. It is understood from the Preface that neither Mr. Rogers nor Mr. Krusin was responsible for that section of the work. We are pleased to know this, for the general standard of the work appears to be high. A minor detail of this kind does little to mar the work as a whole; and we have confidence in the accuracy and reliability of the admirable notes in the other sections of the work.

Books Received.

The Conveyancers' Year Book, 1942. By Sir Lancelot H. Elphinstone, Barrister-at-Law. Vol. III. Solicitors' Law Stationery Society, Ltd. xxviii and 312 pp. £1 5*s*. net.

Loose-Leaf War Legislation, 1941–42. Edited by John Burke, Barrister-at-Law. Parts 10 to 13. Hamish Hamilton (Law Books), Ltd. 6*s*. net each.

PRECEDENTS

Form 1.

War Damage Contribution—Apportionment Clauses (*a*).

1. Vendor bears first instalment; Purchaser (or other subsequent owners in relevant years) will bear the further instalments (*b*).

No apportionment of the War Damage Contribution or instalments thereof shall be made notwithstanding that such contribution or any instalments thereof may be increased or decreased or any change in the risk period or the nature number or amount of the instalments or contributions may be made.

(*a*) See article on the Apportionment of War Damage Contribution, *supra*, p. 19.

It is impracticable to cover every possible combination of circumstances and every possible arrangement between the parties as to the apportionment of the War Damage Contribution or the instalments thereof. In view of the opinion of the Council of the Law Society (see *Law Society's Gazette*, June, 1941) that the common form condition for apportionment of outgoings renders the first instalment apportionable, and the fact that this opinion is not generally accepted (or intended by vendors and purchasers), it seems desirable that contracts for the sale of proprietary interests should state whether any and if so what apportionment of the contribution or instalments thereof is to be made, and, if not, what instalments are to be borne by the vendor and purchaser respectively. The forms which follow can, it is thought, be readily adapted to meet other possible arrangements between vendor and purchaser. The objects aimed at are simplicity and finality, and no discount has been allowed in respect of instalments which are to be paid in advance. The party paying in advance can of course be allowed the like discount as is provided for in the Act.

(*b*) The vendor (if owning the appropriate proprietary interest on January 1, 1941) will be liable for the instalment due July 1, 1941. The subsequent yearly instalments will be payable by the owner of the appropriate proprietary interest on January 1 of the year in which any such subsequent yearly instalment becomes due. Apart from a provision that no apportionment is to be made nothing further is necessary.

II. Purchaser bears all instalments repaying to Vendor the first instalment (or the amount of his net liability in respect thereof).

(i) The first instalment of War Damage Contribution under the War Damage Act 1941 in respect of the property hereby agreed to be sold has been or will be paid by the Vendor.

(ii) The Purchaser shall on completion pay to the Vendor with the balance of the purchase money a sum equal to [the net liability of the Vendor in relation to] the first instalment of War Damage Contribution payable under the War Damage Act 1941 in respect of the property hereby agreed to be sold.

(iii) For the purpose of this condition "first instalment" means the amount of such instalment as fixed by section 20 (3) of the War Damage Act 1941; and "net liability of the Vendor" means (1) the amount of the first instalment less any indemnity in respect thereof recoverable by the Vendor under the said Act from any direct or indirect contributor or from any mortgagee or (2) if the Vendor is an indirect contributor or a mortgagee liable only to make an indemnity payment, the amount of such indemnity payment (*c*).

(iv) The Purchaser shall pay all subsequent instalments of contribution payable under the said Act or any Act amending or extending the provisions of the said Act or requiring any increased or other instalments of contribution to be made and no apportionment of any such instalments shall be made.

III. Vendor bears all instalments (d).

(i) The Vendor has paid or will pay the first instalment of War Damage Contribution payable under the War Damage

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(*c*) The purchaser should only pay the actual amount which is borne by the vendor. For example, if the property is mortgaged and the vendor will be entitled to recover part of the instalment from his mortgage, or if he is a lessee and will not ultimately bear the whole of the instalment he should not receive the full amount of the instalment from the purchaser, but only the amount which he will actually bear. There may, of course, be cases in which it is possible, or even likely, that the indemnity payment cannot be recovered because the party liable is impecunious or because his whereabouts are not known. Such cases will no doubt require special treatment.

(*d*) It is assumed here that the vendor is the direct contributor. Even if the property has been mortgaged by the vendor this will be

Act 1941 in respect of the property hereby agreed to be sold and no apportionment in respect thereof shall be made.

(ii) On completion the Vendor will allow to the Purchaser a sum equal to four times the said first instalment and such sum shall be deductible from the balance of the purchase money accordingly.

(iii) "First instalment" means the amount of the first instalment as fixed by section 20 (3) of the War Damage Act 1941.

(iv) No other apportionment or further allowance to the Purchaser or Vendor in respect of the War Damage Contribution shall be made nor shall any apportionment of any instalment be made notwithstanding that the contribution or any instalments thereof may be increased or decreased or any change in the risk period or the nature number or amount of the instalments or contributions may be made.

IV. Apportionment of First Instalment.

(i) The amount of the net liability of the Vendor (*e*) in relation to the first instalment of War Damage Contribution payable under the War Damage Act 1941 in respect of the property hereby agreed to be sold shall be apportioned between the Vendor and Purchaser as follows. The Purchaser shall pay to the Vendor on completion with the balance of the purchase money such a proportion of the amount of the said net liability as the number of days (inclusive) from the date fixed for completion to December 31 1941 bears to 365 days.

(ii) (a) "First instalment" means the amount of the first instalment as fixed by section 20 (3) of the War Damage Act 1941.

(b) "Net liability of the Vendor" means (1) the

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correct, assuming that the vendor is the direct contributor. Further adjustment of the clause will, however, be necessary in the case of an indirect contributor or where the vendor as lessee does not bear the whole of the instalments. The wording will also depend upon whether the indemnity payment varies under the Fourth Schedule to the Act, *e.g.*, where a 95 per cent. indemnity applies in relation to the first instalment, but a 97½ per cent. indemnity is recoverable in respect of subsequent instalments.

(*e*) See notes (*c*) and (*d*), *supra*.

amount of the first instalment less any indemnity payment recoverable by the Vendor under the said Act from any direct or indirect contributor or from any mortgagee or (2) if the Vendor is an indirect contributor or mortgagee liable only to make of an indemnity payment the amount of such indemnity payment.

(iii) No other apportionment or further allowance to the Vendor or the Purchaser in respect of the War Damage Contribution shall be made notwithstanding that the contribution or any instalments thereof may be increased or decreased or any change in the risk period or the nature number or amount of the instalments or contribution may be made.

Form 2.

Clauses for Insertion in Contracts for Sale of Land Providing for the Payment of the Instalments of the Contribution Payable under the War Damage Act, 1941 (*a*).

[*Though in fact this Form is somewhat similar to Dr. Walford's Form, it is of more general application.*—D. C. L. C.]

(*a*) In the absence of any provision in a contract or conditions for the sale of land the instalments of the contribution payable under the War Damage Act, 1941, ss. 18 and 20, towards the expense of the payments under the Act are not apportionable between vendor and purchaser. Where the Law Society's Conditions of Sale, 1934, or the National Conditions of Sale are incorporated in the contract or the contract is one by correspondence incorporating the Statutory Conditions of Sale, 1925, it would seem that the instalments are outgoings and have to be apportioned, but this is not entirely clear, there being considerable difference of opinion on the subject. In order to avoid any doubt as to the position it will generally be advisable to insert in the contract or conditions of sale specific provisions dealing with these payments. The payments cannot properly be regarded as being in the nature of insurance premiums, which should be borne by the vendor who owned the property during the risk period, which ends on August 1, 1942 (War Damage (Extension of Risk Period) Act, 1941). The contribution payable under the Act is rather a capital levy imposed for a special purpose, and each annual instalment should be regarded as an outgoing of the year in respect of which it is payable.

In deciding whether the next instalment should be apportioned between the vendor and purchaser the following considerations require to be borne in mind: First, under ss. 20 and 23 each instalment becomes due on July 1 of each year but it is payable by the owner of the proprietary interest on January 1 of that year. Secondly, under s. 35, the fact that the owner

1.—*Provision where there is to be No Apportionment of the Instalments* (*b*).

The future instalments of the contribution payable under the War Damage Act 1941 in respect of the property or any indemnity (*c*) to be given in respect of such instalments shall

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has ceased to be the owner does not affect his liability. Thirdly, s. 22 empowers the Treasury in certain circumstances from time to time to increase the number of the instalments or their amount, or both. It therefore follows that where completion takes place after January 1 and before July the vendor remains liable for the instalment, the amount of which may be increased or decreased at any time by order of the Treasury. It is therefore not very easy to adjust the rights of the vendor and purchaser, and each case will require careful consideration. It would seem that generally the contribution payable under the Act should be regarded as a charge on the property and the price adjusted so that the burden will in future fall on the purchaser except where the liability to pay the next instalment has attached to the vendor before completion. In most cases an adjustment in the price will meet the case and avoid the necessity for an apportionment which cannot easily be made owing to the fact that the sum to be paid may be altered by the Treasury. It must further be remembered that where there is more than one proprietary interest in the property or it is mortgaged, the direct contributor who pays the instalment may be entitled to be indemnified against a part of the payment he has made.

(*b*) This is the simplest method of dealing with this matter and, in the case of contracts which are completed between July and January, also the most convenient. The purchaser will be liable under the Act as the owner of the proprietary interest and as such will be entitled to any indemnity out of lessees or mortgagees who may be liable to contribute. Knowing of his liability he can reduce the price he offers correspondingly. Similar considerations really arise where completion takes place between January and July. In this case the vendor is liable for the instalment notwithstanding that he has parted with his interest before it became due: s. 35. The chief drawback to dealing with the instalments in this way arises where, when the contract is entered into, it is not known whether completion will be before or after January 1, so that it is not possible before contract to adjust the price to meet the instalment and some scheme of apportionment is required.

(*c*) If there is only one proprietary interest in the property the subject of the sale, as is the case on a sale of freeholds not subject to leases or mortgages, the contribution is payable by the owner on the relevant date. Where there is more than one such interest it is payable by the owner at that date of that one of those interests which, as against the owners of the remainder of those interests, carries the right to possession of the whole of the property: see s. 23. The person who is liable to pay is the direct contributor. Under s. 24 and the Fourth Schedule the direct contributor may be entitled to be indemnified against part of such instalment. Similarly there may be a right of indemnity against mortgagees: s. 25. Such right of indemnity may extend to 97½ per cent. of the instalment.

not be deemed to be an outgoing and shall not be apportioned between the vendor and purchaser but shall be paid by the party liable to pay the same (whether as direct (*d*) or indirect contributor (*e*)) under the provisions of the said Act.

2.—*Provision where the Instalments are to be Paid by the Purchaser* (*f*).

The whole of the instalment of the contribution payable under the War Damage Act 1941 in respect of the property or any indemnity (*c*) to be given in respect of such instalment payable on July 1 next is to be borne and paid by the purchaser and in the event of completion taking place after January 1 next the purchaser will on completion pay to the vendor in addition to the purchase moneys the sum of £*y* the estimated amount of the said instalment or indemnity after allowing for the indemnity (if any) payable under the said Act in respect of such payment and the purchaser shall not be entitled to be paid nor be required to repay any sum in the event of the said instalment being decreased or increased by order of the Treasury or otherwise.

3.—*Provision where the Next Instalment is to be Apportioned on Completion on the Basis of the Previous Instalment* (*g*).

The next instalment of the contribution payable under the War Damage Act 1941 in respect of the property or any

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Therefore in any clause dealing with these payments it is necessary to provide not only for the payment of the instalment but for any sum payable under the Act as an indemnity in respect of it.

(*d*) See s. 23 (2).

(*e*) See s. 25 (1) (i).

(*f*) Where there is to be no apportionment but it is not clear whether completion will take place before January 1, it is necessary to throw the burden of the next instalment expressly on the vendor or the purchaser so that it may be possible to fix the price having regard to the manner in which the liability under the Act is to be discharged. In this case the contract must provide for an adjustment of the price if completion is in fact delayed after January 1. Where it is known that when it will take place Form 1 can be used; where this is not clear this Form should be used.

(*g*) Where apportionment is required this should generally take place on completion on the basis of the previous year's figures.

indemnity (*c*) to be given in respect of such instalment shall be deemed to be an outgoing and shall be apportioned between the vendor and purchaser accordingly and on completion the balance shall be paid by or allowed to the purchaser and for the purposes of the said apportionment the said instalment or indemnity shall be deemed to be the sum payable on July 1 last after deducting therefrom the indemnity (if any) payable under the said Act in respect of such payment [*or* the sum of £*y* (*h*)] [PROVIDED THAT (*i*) if before the date of actual completion the Treasury has in exercise of the powers conferred by the said Act by order altered the amount of the said instalment the new amount fixed by the said order shall be the sum to be apportioned between the vendor and purchaser after due allowance has been made in respect of the indemnity (if any) to be received under the said Act in respect of such payment.]

4.—*Provision where the Current Instalment is to be Apportioned after Payment* (*k*).

The next instalment of the contribution payable under the War Damage Act 1941 in respect of the property or any indemnity to be given in respect of such instalment shall be deemed to be an outgoing and shall be apportioned between the vendor and purchaser accordingly. The said instalment shall be paid in accordance with the provisions of the said Act by the vendor [*or* purchaser, *or* estate in owner of the property on January — 19—] and after payment of the said instalment

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(*h*) Although it is convenient to take the last year's payment as the basis for apportionment, where there is one or more indirect contributors liable to indemnify the direct contributor somewhat complicated calculations may be necessary in order to adjust the payments each party is to make; in this case, unless the sums involved are large, the contract should finally fix the sum payable.

(*i*) Having regard to the power conferred on the Treasury by s. 22 to alter the amount of the contribution, this provision may be necessary where the sums involved are large. In most cases, however, the chance of a substantial alteration in the sum payable in any year seems too remote to make any specific provision dealing with the matter advisable.

(*k*) This Form provides for the apportionment of the current instalment after payment. In most cases it will be convenient to make the apportionment on completion, unless there is good reason for the contrary in order to postpone the final settlement of accounts.

the vendor [*or* purchaser, *or* party paying the same] shall be entitled to be repaid on production of the receipt for such payment the duly apportioned part of such instalment payable hereunder by the purchaser [*or* vendor, *or* the other party hereto] PROVIDED THAT before apportioning any payment so made there shall be deducted from such payment all sums (if any) payable under the said Act by any former persons liable to give an indemnity in respect of the whole or any part or parts of such payment.

Form 3.

Specific Bequests and Devises with Provision for the Devolution of Insurance and Compensation Moneys Payable under the War Damage Act, 1941, should the property suffer War Damage (*a*).

(*a*) These forms are intended to meet the difficulties which may arise where the subject-matter of a specific devise or bequest suffers war damage before the testator's death. If no express provision is inserted in the will dealing with this case the legal position is reasonably clear. In the case of chattels, if these are totally destroyed, there is an ademption and the insurance moneys, if any, received after the testator's death will not pass to the legatee: *Durant* v. *Friend*, 5 De G. & S. 343. If they are not destroyed but merely damaged, the beneficiaries will take the damaged chattels but not the compensation moneys, unless these before the testator's death have been spent in repairing the chattels.

The position in regard to land is governed by s. 46 (2) of the War Damage Act, 1941, which provides that:—

"A devise or bequest of an interest in, or in the proceeds of sale of, land which sustains war damage in respect of which a value payment is made, or in, or in the proceeds of sale of, a tenancy in respect of which a payment is made under section fifteen of this Act, contained in a testamentary disposition made before the occurrence of the war damage shall, in the absence of any contrary intention expressed therein or in any other testamentary disposition made by the testator, have effect as if it had included a bequest of any such payment, or of any part of any such payment, to which the testator might become entitled in respect of that interest."

It would seem that this section does not operate to pass to a devisee a value payment received by the testator before his death, but this is not quite clear.

A payment of cost of works raises no difficulty as this is made to the person by whom the cost of incurring the work is incurred: see s. 9 (1) of the Act. It will therefore either be made to the devisee, after the property has been vested in him and he has repaired it, or to the testator or his personal representatives after they have repaired it. The benefit of the payment will thus accrue to the devisee.

1.—*Bequest of Chattels.*

I make the following bequests (*b*) free of duty:—

(a) to A of *etc.* [*here give particulars of the chattels bequeathed*];

(b) to B of *etc.* all my clothes and wearing apparel.

2.—*Bequest of Settled Chattels with directions to Insure against War Damage.*

I bequeath free of duty to my trustees all my household furniture jewellery plate and all other articles of personal domestic or household use or ornament belonging to me and not hereinbefore effectually disposed of [except such articles as from their trifling value or perishable nature my trustees shall consider unsuitable to be settled which articles I give to my wife absolutely] UPON TRUST to permit my wife to have the use and enjoyment thereof during her life [widowhood] she keeping the same property insured against fire and I DECLARE that after her death [or remarriage] the same shall fall into my residuary estate and I DECLARE that it shall not be necessary to take an inventory thereof and that my executors shall not be concerned (except as hereinafter provided) to see to the insurance thereof or be liable for any loss or damage that may happen thereto from any cause whatever and I DIRECT (*c*) my trustees after my death to insure the furniture and effects hereinbefore settled on my wife under the War Damage Act 1941 or under any other Government scheme of insurance from time to time in force

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(*b*) It would seem that generally bequests of chattels can be divided into two groups from the point of view of war damage. Into the first fall furniture and effects which are given to the legatees either for sentimental reasons or because of their family or historical associations. In the case of this class of bequest it will frequently happen that the testator does not wish the legatee to take the insurance moneys and the principle of ademption can be left to operate. Into the second category fall bequests of furniture and effects which are intended to furnish the legatee's home. In this case it will be generally advisable to give to the legatee a pecuniary legacy to enable the legatee to replace any necessities at once.

(*c*) The Trustee (War Damage Insurance) Act, 1941, confers on trustees power to insure against war damage. It may be advisable in the case of settled chattels to direct the trustees to insure, as the law imposes no duty to do so.

against war damage in three-fourths (*d*) of the value thereof [*or* to the full value thereof] and I DIRECT (*e*) my trustees to pay all premiums in respect of such insurance out of the income of my residuary estate.

3.—*Provisions for the Devolution of the Insurance Moneys where Chattels Suffer War Damage.*

In the event of the whole or any part of the furniture and effects bequeathed by clause 1 hereof suffering war damage I HEREBY DECLARE that the insurance (*f*) or compensation moneys payable in respect of such war damage shall fall into and form part of my residuary estate PROVIDED ALWAYS that in the event of the Board of Trade electing pursuant to the powers contained in any policy of insurance to replace or reinstate all or any of the said furniture and effects any chattels so replaced or reinstated shall pass under the bequest hereinbefore contained to the legatee to whom I had bequeathed the chattel suffering such war damage [*or* the insurance or compensation moneys payable in respect of war damage to the furniture and effects bequeathed by clause 1 hereof received after my death shall be

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(*d*) In view of the high cost of insurance it would seem that, if the estate is small, the war damage insurance should be limited to a proportion of the total value. In view of the fact that a policy of insurance under the private chattels scheme is a first loss policy, the risk in under insurance is not as great as it is under the business scheme, where, if the insured's interest in the property exceeds the sum for which it is insured, the insured is to be considered to be his own insurer for the excess and has to bear a rateable proportion of the loss accordingly.

(*e*) Under s. 82 of the War Damage Act, 1941, and s. 1 of the Trustee (War Damage Insurance) Act, 1941, premiums paid under policies issued under the Act are to be treated for all purposes as outgoings of a capital nature. As insurance under the Act is voluntary in the case of chattels falling under the private chattels scheme, if a testator directs such insurance he can throw the burden of the premiums on income. This generally will be most convenient if there is any settled residue out of which they can be paid, as it is generally difficult for trustees to raise and pay small sums out of capital.

(*f*) This merely states the effect of the rule of ademption which would operate apart from such a direction. The insertion, however, of an express direction on the matter may be useful as making the position clear. The statutory policies of insurance contain express provisions enabling the Board of Trade to replace or reinstate the whole or any part of the property suffering war damage instead of paying the amount of the damage.

held by my trustees UPON TRUST for the legatee to whom I had bequeathed the chattel suffering such war damage AND I FURTHER DECLARE (*g*) that in the event of my trustees recovering a lump sum payment or payments in respect of the furniture and effects bequeathed to two or more legatees my trustees may at any time or times at their uncontrolled discretion apportion such payment or payments between such legatees in such shares and proportions as they may think fit and every apportionment so made by my trustees shall be conclusive and binding on all legatees under this my will or any codicil hereto]

4.—*Alternative Provisions where the Chattels are Settled.*

In the event (*h*) of the whole or any part of the furniture and effects bequeathed by clause 2 hereof suffering war damage I DIRECT my trustees on the request in writing of my wife to raise out of my residuary estate any sum or sums not exceeding in the whole the sum of £*y* and to pay or apply the same in the purchase of furniture and effects to replace those chattels which have suffered war damage or in repairing such chattels as may need repair and I DECLARE that any furniture and effects purchased under the power hereby conferred shall be held upon the same trusts as are hereinbefore declared concerning the furniture and effects which have suffered war damage [AND I FURTHER AUTHORISE my trustees if they in their absolute discretion think fit so to do to raise out of my residuary estate any sum or sums not exceeding in the whole the sum of £*x* and to pay the same to my wife absolutely to enable her to replace any articles of trifling value or perishable nature which have been destroyed as a result of war damage and which may be required to be replaced to enable her to re-establish a home]

(*g*) Unless all the furniture, etc., is given to one person it is necessary to give to the trustees power to apportion any insurance moneys.

(*h*) In the case of a settled bequest of furniture if the testator wishes the legatee to have the furniture for a home, should the estate be of such size to make this possible it will generally be advisable to give a pecuniary legatee to have the furniture for a home, should the estate be of such size will not be received until after the war. If the legatee has to wait until such moneys are received it may, in the case of an elderly beneficiary, largely do away with the benefit of the legacy.

AND I FURTHER DECLARE that my trustees may raise such sum or sums notwithstanding the fact that no insurance or compensation moneys have been received by my trustees in respect of such war damage and I DECLARE that all insurance and compensation moneys received in respect of such war damage shall fall into and form part of my estate AND I DECLARE that the powers hereinbefore conferred to raise money out of my residuary estate are given to my trustees to enable them to provide sufficient furniture for a home for my wife and it is not my intention that every chattel which may be destroyed shall be replaced but only such chattels as in the opinion of my trustees are reasonably necessary to furnish my wife's home.

5.—*Indemnity to Trustees.*

I HEREBY FURTHER DECLARE that my trustees shall have full power to claim the insurance or compensation moneys in respect of any war damage and to compromise any such claim and that they shall be free from any responsibility in respect of any such claim or in respect of the manner in which they may exercise their powers conferred in respect of chattels suffering war damage and they shall be fully indemnified out of my residuary estate in respect of any loss arising in the exercise of the several powers hereby conferred.

6.—*Absolute Devise and Provision for Payment of Compensation Moneys if Property Suffers War Damage.*

I DEVISE all my freehold dwelling-house and land situate at *etc.* and known as Whitehouse to C of *etc.* in fee simple (*i*) PROVIDED ALWAYS that if before my death Whitehouse sustains war damage in respect of which a value payment is made I REVOKE the devise hereinbefore contained and Whitehouse and the said value payment shall fall into and form part of

(*i*) This negatives the provisions of s. 46 (2) of the Act and not only takes from the devisee the value payment which would pass to him but also the land. In cases where property is devised for family or sentimental reasons to a beneficiary, it may be that the testator would not wish the property to pass to the beneficiary where there had been total destruction.

my residuary estate [*or* (*j*) PROVIDED ALWAYS that if Whitehouse sustains war damage in respect of which a value payment is made if such payment is received by me in whole or in part prior to my death the sum so received shall fall into and form part of my estate but if such payment is received in whole or in part by my trustees after my death the sum so received shall be held by them upon trust for C absolutely].

7.—*Devise of Settled Property.*

I DEVISE all my lands and hereditaments situate in the County of —— known as Blackhouse to my trustees upon the trusts and subject to the powers and provisions hereinafter declared concerning the same that is to say on trust for my wife during her life with remainder in trust for my son D absolutely.

8.—*Provision for the Devolution of Compensation Moneys where the Devised Property is Settled and for the Provision of Alternative Premises.*

I HEREBY DECLARE (*k*) that in the event of Blackhouse before my death suffering war damage in respect of which a value payment is made such payment shall fall into and form part of my estate and I DIRECT my trustees on the request of my wife in writing to raise out of my residuary estate such sum or sums not exceeding £*z* as may be necessary to rebuild a suitable house for her on Blackhouse or if my wife so requests I DIRECT my trustees to purchase a dwelling-house with suitable outbuildings and land to be held therewith as residence for my wife and to be either freehold or leasehold held for a term of which not less than fifty years shall be unexpired at the time of purchase

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(*j*) Where the testator receives the value payment himself the question arises as to whether it is to pass to the devisee. Generally it would seem that it should not, as it may have been spent or mixed with the testator's estate. So far as it has been spent on the devised land the benefit of the expenditure will pass to the devisee.

(*k*) In the case of settled land, as in the case of settled chattels, it will frequently be convenient to allow the compensation moneys to fall into residue and to give the trustees power to raise money out of residue to provide a home for the devisee as soon as one is required without waiting for the compensation moneys to be received.

Such messuage and premises shall be held upon the trusts hereinbefore declared concerning Blackhouse and in the event of such purchase I DIRECT my trustees to stand possessed of Blackhouse upon trust to sell the same and to hold the net proceeds of sale as part of my residuary estate.

9.—*Provision for Throwing the Future Instalments of the Contribution Payable under the War Damage Act*, 1941, *on Devisees in Exoneration of Residue* (*l*).

AND I HEREBY DECLARE that all instalments of the contribution payable under the War Damage Act 1941 and any indemnity in respect of such instalments payable thereunder and any additional contributions under any subsequent Act or Acts in respect of war damage which are unpaid at my death shall be deemed to be a charge on the property in respect of which they are payable and shall be borne by the devisee or devisees legatee or legatees of such property or properties and I FURTHER DECLARE that in the event of my trustees being liable to pay an instalment or contribution or an indemnity payment which is payable in respect of a property devised to two or more persons my trustees shall apportion the payment made by them between such properties and such apportionment shall be conclusive and binding on all persons interested in the said properties.

(*l*) The War Damage Act, 1941, s. 46 (2), expressly gives to the devisee or legatee of an interest in land any value payment under the Act; it does not, however, provide for the payment of contributions due under s. 18 in respect of the land. The deceased's personal representatives will be liable to the extent of his assets (see s. 47) to pay any instalment for which he became liable during his lifetime or the liability for which attaches before any assent is executed in favour of the beneficiary. The contributions and indemnities payable under the Act are to be treated as outgoings of a capital nature: s. 82. In these circumstances it would seem that all instalments of contribution or indemnity payments unpaid at the death should be thrown on to the person taking the property as if they were a mortgage charged on it and s. 35 of the Administration of Estates Act, 1925, applied.

LANDLORD AND TENANT (WAR DAMAGE) ACTS, 1939 AND 1941 (*a*).

Form 4.

Conditional Notice of Retention by a Tenant under section 2 (1) of the Act of 1941 (*b*).

This and the following notices were drafted by B. A. Bicknell, of Lincoln's Inn.

To A [*landlord*] of *etc.*

In the Matter of No. — —— Street (*c*).

I, B [*tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to the Landlord and

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(*a*) The Landlord and Tenant (War Damage) (Amendment) Act, 1941, like the principal Act, the Landlord and Tenant (War Damage) Act, 1939, is in many cases brought into operation by the service of notices. Forms of the various notices which had to be served under the principal Act were given in the *Conveyancer and Property Lawyer* (vol. 4 (N.S.), p. 449). The following notices giving effect to the provisions of the Act of 1941 are supplemental to the notices which have to be served under the principal Act. The Act of 1941 is to be construed as one with the principal Act: s. 19 of the Act of 1941. The provisions as to the service of notices laid down in s. 20 of the principal Act apply accordingly: see vol. 4 (N.S.), p. 449, note (*a*).

(*b*) S. 2 of the Act of 1941 provides that: "(1) Where (a) a notice of retention served under the principal Act by the tenant of land which is unfit by reason of war damage contains a statement that the notice is conditional and will be treated as a notice of disclaimer if the War Damage Commission determine to make a value payment under Part I of the War Damage Act, 1941, in respect of war damage; and (b) a copy of the notice is, within one month from the service thereof on the landlord, served on the War Damage Commission; the notice shall have effect in accordance with the following provisions of this Act, and is hereinafter in this Act referred to as a 'conditional notice of retention'". Under subs. (2) as soon as the Commission have determined what payment they will make in respect of land to which a conditional notice of retention relates, they are to serve on the tenant a notice stating their determination. If the Commission determines to make a value payment, ss. 8 (2) (3) and 9 (1) (2) (3) of the principal Act, which set out the effect of a notice of disclaimer and confer power on the Court to modify such effect, are to operate as if "(a) the conditional notice of retention were a notice of disclaimer served on that date" on which the Commission's determination became final; "(b) the reference in s. 8 (2) to a notice of disclaimer in respect of a sublease included a reference to a conditional notice of retention, and (c) the reference in subs. 3 of section 9 to the

Tenant (War Damage) Act 1939 section 4 (2) (b) HEREBY GIVE TO YOU NOTICE that I [C] elect[s] to retain the lease [tenancy agreement] dated the —— day of —— made between yourself of the one part and myself [C] of the other part of the land and dwelling-house known as —— situate at —— which said land has become unfit by reason of war damage on the terms specified in the said Act PROVIDED THAT this notice is conditional and shall be treated as a notice of disclaimer if the War Damage Commission determine to make a value payment under Part I of the War Damage Act 1941 in respect of the war damage. A copy of this notice is being served on the War Damage Commission (*d*).

Dated the —— day of ——.

(Signed) ——.

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period allowed under the Act for serving a notice to avoid disclaimer were a reference to a period of one month or such longer period as the Court may allow." Under subs. (4), where a tenant has served a conditional notice of retention, his obligation under s. 10 of the Act of 1939 to render the land fit is, pending notification of the Commission's determination, limited to an obligation (a) to execute such works as are reasonably practicable for temporarily meeting the circumstances created by the damage; (b) to take such steps as may be necessary to enable the Commission to make its determination; and (c) to take such steps as are reasonably practicable to secure that, if the payment is a payment of cost of works, the necessary works will be executed without delay. Where a conditional notice of retention has been served and the property suffers further war damage before the land has been rendered fit, the notice, unless withdrawn under s. 12 of the principal Act, extends to the subsequent damage: s. 2 (6).

(*c*) It is convenient to head the notice with the name and address commonly used for postal purposes of the premises.

(*d*) The notice will not be valid unless within one month from the service a copy is served on the War Damage Commission: s. 2 (1) (b).

Form 5.

Notice by a Tenant to the War Damage Commission of Service of Conditional Notice of Retention under section 2 (1) (b) of the Act of 1941 (*e*).

To War Damage Commission of *etc.*

In the Matter of No. — —— Street (*c*).

I, A [*tenant*] of *etc.* [*or* I, A of *etc.* as agent for and on behalf of B [*tenant*] of *etc.*] pursuant to the provisions of the Landlord and Tenant (War Damage) (Amendment) Act 1941 section 2 (1) (b) HEREBY GIVE TO YOU NOTICE that on the —— day of —— I [B] served a conditional notice of retention on C of *etc.* the landlord in respect of the premises known as —— situate at —— comprised in a lease [tenancy agreement] dated —— made between —— of which premises I am [B is] tenant I enclose a copy of the said notice.

Dated the —— day of ——.

(Signed) ——.

Form 6.

Notice by a Tenant to his Landlord that a Conditional Notice of Retention is to be treated as a Notice of Disclaimer under section 2 (3) of the Act of 1941 (*f*).

To A [*landlord*] of *etc.*

In the Matter of No. — —— Street (*c*).

WHEREAS the War Damage Commission served on me [C] on the —— day of —— a notice stating that they have determined to make a value payment under the War Damage Act 1941 in respect of the premises known as —— situate at

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(*e*) For a conditional notice of retention to be valid a copy of the notice within one month of its service on the landlord must be served on the War Damage Commission: see s. 2 (1) (b) of the Act of 1941. Any copy of a notice required to be served on the Commission may be served by delivering it to an officer of the Commission, or by sending it in a prepaid registered letter addressed to the Commission at any office of the Commission.

(*f*) This notice complies with the requirements of subs. (3) of s. 2 of the Act of 1941. It must be served on the landlord within fourteen days of the date when the determination of the Commission becomes final. The determination becomes final, in effect, when the time limited for

—— comprised in a lease [tenancy agreement] dated —— and made between —— and the said determination of the Commission became final on the —— day of —— Now I, B of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to section 2 (3) of the Landlord and Tenant (War Damage) (Amendment) Act 1941 HEREBY GIVE TO YOU NOTICE that the conditional notice of retention dated the —— day of —— which I [C] served upon you is to be treated as a notice of disclaimer.

And I [C] declare[s] (*g*) that I have [C has] granted no underlease of the premises and have [has] not mortgaged or charged the same [*or* I have [C has] granted the following underlease[s] [tenancy agreement[s]] of the premises namely [*here set out particulars of any leases or tenancy agreements giving the name and address of the undertenant the term and rent reserved and the terms and particulars of any assignments of such underleases or under-tenancies*]. By a deed of mortgage [*here give particulars of the mortgage and the name and address of the mortgagee*] I [C] mortgaged the premises in favour of X and the said X has assigned the said mortgage to Y [*give full name and address*].

Dated the —— day of ——.

(Signed) ——.

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appealing has expired or, where an appeal is brought, when the appeal has been finally determined or abandoned: see s. 8 (2).

Subs. (3) provides: "Within fourteen days of the said date the tenant shall serve on the landlord and on any person claiming immediately under the tenant (whether as assignee, mortgagee or lessee) in respect of an interest in the land comprised in the lease, a notice stating that the conditional notice of retention is to be treated as a notice of disclaimer and containing such particulars as are necessary to identify the lease concerned; and every person, other than the landlord, upon whom a notice is served under this sub-section shall, within fourteen days from the receipt of the notice, serve upon every person (other than the person from whom he has received the notice)—(a) who has immediately derived from him an interest in the land comprised in the lease; or (b) to whom he has immediately assigned such an interest; a notice stating the terms of the notice served on him; and any person who fails to comply with the provisions of this sub-section shall be liable to make good to any other person any damage suffered by that other person by reason of the failure."

(*g*) The notice should contain the particulars required in a notice of disclaimer: see s. 7 of the principal Act and the form of notice of disclaimer, vol. 4 (N.S.), p. 451.

Form 7.

Notice by Tenant to Persons Claiming under him that a Conditional Notice of Retention is to be treated as a Notice of Disclaimer under section 2 (3) (*h*).

To A [*assignee, mortgagee, lessee*] of *etc.*

In the Matter of No. — —— Street (*c*).

I, B [*tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] HEREBY GIVE TO YOU NOTICE pursuant to the provisions of section 2 (3) of the Landlord and Tenant (War Damage) Act 1941 that on the —— day of —— the War Damage Commission served a notice on me [C] stating that they had determined to make a value payment under the War Damage Act 1941 in respect of the premises known as —— situate at —— of which premises I am [C is] tenant under a lease [tenancy agreement] dated the —— day of —— and made between —— and the said determination of the Commission became final on the —— day of —— and accordingly the conditional notice of retention dated the —— which I [C] served on D (*i*) of *etc.* my [C's] landlord under the said lease [tenancy agreement] is to be treated as a notice of disclaimer.

[And (*j*) you are required by section 2 (3) of the said Act within fourteen days of the receipt of this notice to serve upon

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(*h*) Within fourteen days of the determination of the Commission to make a value payment becoming final, a tenant must serve notice on any person claiming under him whether as assignee, mortgagee or lessee, stating that the conditional notice of retention will be treated as a notice of disclaimer. If he fails to serve such notice the tenant will be liable to make good any damage suffered by any person by reason of that failure: see s. 2 (3) and note (*f*), *ante*.

(*i*) This notice corresponds to the notice of service of a notice of disclaimer required to be served by s. 7 (2) of the principal Act and it would seem that the address of the landlord should be given as is required by s. 7 (2).

(*j*) S. 2 (3) of the Act of 1941 does not require the provisions of the sub-section, stating the duty of persons deriving title under the tenant to notify persons deriving title under them to be set out. In view, however, of the obligation imposed by ss. 7 and 8 of the principal Act, it seems that the notice stating that a conditional notice of retention is to be treated as a notice of disclaimer should contain all the particulars which would be required if it were a notice of disclaimer.

every person other than myself [C] (a) who has immediately derived from you an interest in the land comprised in the lease [tenancy agreement] or (b) to whom you have assigned such an interest a notice stating the terms of this notice.]

Dated the —— day of ——.

(Signed) ——.

Form 8.

Conditional Notice of Retention by a Tenant to his Landlord under s. 2 (7) of the Act of 1941, where a Notice of Retention has already been Served or is Deemed to have been Served under the Act of 1939 (*k*).

To A [*landlord*] of *etc.*

In the Matter of No. — —— Street (*c*).

WHEREAS by a notice of retention dated the —— day of —— and served on you I, B [*tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to the provisions of the Landlord and Tenant (War Damage) Act 1939 section 4 (2) (b) gave to you notice that I [*or* C] elected to retain the lease [tenancy agreement] dated the —— day of —— made between —— of the land and dwelling-house known as —— situate at —— which said premises had become unfit by reason of war damage on the terms specified in the said Act [*or* WHEREAS by a notice to elect served upon me [C] on the —— day of —— pursuant to the Landlord and Tenant (War Damage) Act 1939 section 4 (3) you required me [C] within one month or such period as might be allowed either to serve a notice of disclaimer of the lease [tenancy agreement] dated the —— day of —— made between —— of the land and dwelling-house known as —— situate at —— which said land had become unfit by reason of war damage or to serve a notice on you of retention of the said lease AND WHEREAS I [C] did not comply with the

(*k*) The Act of 1941 became law on August 7, 1941, and under s. 2 (7) persons who have served or who are deemed to have served a notice of retention have three months from that date in which to turn a notice of retention served before the Act of 1941 into a conditional notice of retention.

said notice within the period allowed by the said Act [*or* by a notice of retention dated the —— day of —— and served on you I [C] gave to you notice that I [C] elected to retain the said lease]] I, B [*tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to the provisions of section 2 (7) of the Landlord and Tenant (War Damage) (Amendment) Act 1941 HEREBY GIVE to you notice that the said notice of retention dated the —— day of —— which I [C] served on you under the provisions of the Act of 1939 [*or* the said notice of retention which I, B [*or* C] am [is] deemed to have served on you] shall be deemed to be a conditional notice of retention and shall be treated as a notice of disclaimer if the War Damage Commission determine to make a value payment under Part I of the War Damage Act 1941 in respect of the war damage. I [C] am [is] serving a copy of this notice on the said Commission.

Dated the —— day of ——.

(Signed) ——.

Form 9.

Notice by a Tenant in respect of Separate Hereditaments Electing to treat a Conditional Notice of Retention as an Unconditional Notice of Retention of the Whole Property under section 3 (2) of the Act of 1941 (*l*).

To A [*landlord*] of *etc.*

In the Matter of Nos. 1–20 —— Street (*c*).

WHEREAS by a conditional notice of retention dated the —— day of —— I [C] pursuant to section 2 (1) of the Landlord

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(*l*) Where different parts of the land comprised in a lease to which a conditional notice of retention relates constitute different hereditaments and the War Damage Commission serve a notice that they have determined to make a value payment in respect of one or more but not all the hereditaments, the tenant may apply to the Court for an order that the lease shall be treated as if it were two separate leases and the conditional notice of retention shall be treated as if it were two notices. If the tenant does not apply to the Court, or the Court refuses such application, the tenant may within one month from the date on which the determination of the Commission becomes final elect to treat the conditional notice of retention as an unconditional notice of retention by the

and Tenant (War Damage) (Amendment) Act 1941 gave to you conditional notice that I [C] elected to retain the lease [tenancy agreement] dated the —— day of —— made between —— of the land and dwelling-houses known as Nos. 1–20 —— Street situate at —— which land was unfit by reason of war damage and I [C] duly served a copy of the said notice of the —— day of —— on the War Damage Commission

And whereas the said Commission on the —— day of —— served a notice on me [C] stating that they had determined to make a value payment in respect of Nos. 1–5 —— Road but not in respect of the remaining hereditaments comprised in the said lease [tenancy agreement] and such determination became final on the —— day of ——

And whereas I [C] have [has] not made an application to the Court under section 3 (1) of the Act of 1941 to have the lease [tenancy agreement] treated as two separate leases [tenancy agreements] [*or* I [C] have [has] made an application to the Court under section 3 (1) of the Act of 1941 to have the lease [tenancy agreement] treated as two separate leases [tenancy agreements] and the Court has refused such application]

Now I, B [*tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] hereby give to you notice that I [C] elect[s] to treat the said conditional notice of retention dated the —— day of —— as an unconditional notice of retention.

Dated the —— day of ——.

(Signed) ——.

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service of an appropriate notice on his landlord: s. 3 (2). If the Court does not make an order and the tenant does not serve such a notice, the determination of the Commission is to have effect as if it were a determination to make a value payment in respect of all the land (s. 3 (3) and as if the date on which it becomes final were postponed for one month, or, where an application is made to the Court, on such later date as the Court may fix. Therefore, if the tenant does not make an application to the Court or serve an unconditional notice of retention, the provisions of s. 2 (3) will operate and he must give notice to his landlord and to persons claiming immediately under him that the conditional notice of retention is to be treated as a notice of disclaimer.

Form 10.

Notice by a Landlord or Tenant to the War Damage Commission Requesting Notification of the Commission's Determination in Respect of War Damage under section 8 (1) of the Act of 1941 (*m*).

To the War Damage Commission of *etc.*

In the Matter of No. — —— Street (*c*).

I, A [*tenant or landlord*] of *etc.* [*or* I, A as agent for and on behalf of B [*tenant or landlord*] of *etc.*] hereby request the Commission as soon as they have determined what kind of payment (if any) is to be made under Part I of the War Damage Act 1941 in respect of war damage to the premises known as —— situate at —— comprised in a lease [tenancy agreement] dated the —— day of —— and made between —— to serve a notice on me [B] of their determination.

Dated the —— day of ——.

(Signed) ——.

(*m*) Under the War Damage Act, 1941, the War Damage Commission is not bound to notify all persons having an interest in property of their determination to make a payment in respect of war damage to that property. Generally it will be advisable for a landlord or tenant, who has not claimed under the Act so that he will hear of any determination of the Commission, to send a request to the Commission under s. 8 (1) of the Act of 1941 so that he may receive an official notification of the determination of the Commission.

Form 11.

Notice by a Landlord to his Tenant that Premises have been Rendered Fit in Accordance with the Obligations imposed by section 11 of the Act of 1939 (*n*).

To A [*tenant*] of *etc.*

In the Matter of No. — —— Street (*c*).

I, B [*landlord*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*landlord*] of *etc.*] HEREBY GIVE TO YOU NOTICE that the land and dwelling-house known as —— situate at —— comprised in the lease [tenancy agreement] dated the —— and made between —— which was the subject of a notice to avoid disclaimer dated the —— day of —— and duly served on you pursuant to the provisions of the Landlord and Tenant (War Damage) Act 1939 has been rendered fit in accordance with the covenant implied in such lease [tenancy agreement] by section 11 of the said Act and rent is payable under the said lease from the date hereof (*o*).

Dated the —— day of ——.

(Signed) ——.

(*n*) Where a landlord serves a notice under s. 4 (5) of the Act of 1939 to avoid disclaimer he becomes liable under s. 11 to render the property comprised in the lease fit as soon as is reasonably practicable. No rent is payable by the tenant from the date of the service of the notice of disclaimer until the date when the land is rendered fit. The Act does not require that any notice shall be served when the land has been rendered fit, but in most cases it will be essential that such a notice should be given to the tenant, so that he may know when he can retake possession of the premises and when his liability for rent again begins.

(*o*) Under s. 11 (b) rent is payable from the date when the premises have been rendered fit. The tenant cannot know this date, and it will generally be advisable to serve the notice when the premises are fit and set out the date from which rent begins in the notice.

LANDLORD AND TENANT (WAR DAMAGE) ACTS, 1939 and 1941 (*Concluded*).

Form 12.

Notice Avoiding a Notice of Retention or a Notice to Avoid Disclaimer Pursuant to an Order Granting Leave under section 12 of the Act of 1939, further War Damage having Occurred (*p*).

To A [*landlord, tenant*] of *etc.*

In the Matter of No. — —— Street (*c*).

I, B [*landlord, tenant*] of *etc.* [*or* I, B of *etc.* as agent for and on behalf of C [*landlord, tenant*] of *etc.*] HEREBY GIVE TO YOU NOTICE that pursuant to the leave of the Court granted on the —— day of —— I, B hereby withdraw [*or* C hereby withdraws] the notice of retention [to avoid disclaimer] dated the —— day of —— duly served on you in respect of the lease [tenancy agreement] dated the —— day of ——.

Dated the —— day of ——.

(Signed) ——.

(*p*) See s. 12 of the Act of 1939. It is to be observed that where property comprised in a lease suffers further war damage and on an application to the Court the landlord or tenant has been granted leave to withdraw a notice to avoid disclaimer or a notice of retention, a notice of withdrawal must be served. The order of the Court does not of itself operate as such a withdrawal.

Form 13.

WAR DAMAGE ACT, 1941.

(Forms (1) *to* (4) *deal with the transfer of property which has suffered war damage and with provisions for the receipt of the compensation payable under the Act* (*a*).)

(1)

Agreement for the Sale of Freehold Premises which have Suffered War Damage together with the Value Payment in Respect of

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(*a*) There is considerable difficulty in dealing with property which has suffered war damage as the compensation payments under the War Damage Act, 1941, are not annexed to the land so as to pass automatically with it. There is the further difficulty that the Commission may not decide what kind of payment it will make until after the war. Therefore dealings with land, where the result of the Commission's determination is doubtful, is a difficult and speculative business. However, many vendors cannot postpone dealing with their properties until after the war. The conveyancer has therefore to do the best he can in the uncertainties of the position. Under s. 9 (7) compensation payments are transmissible by assignment, but any assignment affecting any beneficial interest is of no effect until it has been approved in writing by the War Damage Commission. Such approval, however, does not appear in fact to be a necessary condition precedent to any sale of land which has only suffered minor damage in respect of which a payment of cost of works will be made, as under s. 9 (1) such payment will be made to "the person by whom the cost of executing the works is incurred". If, therefore, the damaged property is conveyed to a purchaser and he does the repairs he should have no difficulty, on the production of the receipts for payment for repairs, in obtaining the payment of cost of works. The position in regard to a value payment is very different. Under s. 9 (2) the value payment, if there is only one proprietary interest, will be paid to the person who was the owner of the damaged hereditament immediately before the occurrence of the war damage. If the property is to be sold together with the benefit of the value payment the consent of the Commission must be obtained. This matter is governed by s. 9 (7) which provides:—

"The right to receive a payment under this Part of this Act in respect of war damage or a share of such a payment shall be transmissible by assignment or by operation of law as a personal right, but an assignment in whole or in part of any such payment or share, made either before or after the commencement of this Act, whether absolutely or by way of charge, other than an assignment which does not affect any beneficial interest in the payment or share or in any part thereof, shall be of no effect until it has been approved in writing by the Commission." Enquiries were made of the Commission as to their attitude towards assignments of value payments and the Commission then stated

such Premises, the Agreement being Conditional on the Approval of the War Damage Commission (*b*).

AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") and B of *etc.* (hereinafter called "the Purchaser") of the other part Parties.

1. The Vendor agrees to sell subject to the approval of the War Damage Commission being obtained as hereinafter mentioned and the Purchaser agrees to purchase for the sum of £*x* the fee simple in possession free from incumbrances of the land and dwelling-house known as —— situate at —— more particularly described in the Schedule hereto TOGETHER with the value payment under the War Damage Act 1941 payable in respect of the said premises. Agreement for sale.

2. The Purchaser having paid to Messrs. —— the Vendor's solicitors as stakeholders the sum of £— part of the said purchase money as a deposit on the execution of this agreement shall pay the residue of the said purchase money to the Vendor or as he shall direct on the —— day of —— 19— at the office of the Vendor's solicitors at which time and place the purchase shall be completed. Payment of purchase money.

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that they are only prepared to approve assignments in certain special circumstances, such as when the parties had a previous fiduciary or contractual relationship direct or indirect in the property (*e.g.*, landlord and tenant or sub-tenant) or where the assignee is a Government Department or a public or local authority: See the *Solicitors' Journal* (Vol. 85, p. 262). In view of this pronouncement and in the light of the little experience that has as yet been gained in respect of applications which have been made for approval, it seems that at present only in exceptional circumstances will the Commission approve assignments. The application for the approval of the Commission should be supported by a memorandum explaining the reasons for desiring to assign the value payment and the circumstances of the parties if these are relevant, as for example that the vendor is going abroad indefinitely on government business.

(*b*) Stamp 6d. An agreement for the sale of land which has suffered war damage together with the value payment can either provide for the purchase price being a lump sum payment or it can be apportioned between the land and the value payment. If the sale is dependent upon the approval of the Commission being obtained and the purchaser will not take the land without a valid assignment of the value payment, there appears to be little advantage in apportioning the price and such apportionment may have the disadvantage of hampering the purchaser in his negotiations with the Commission as to the amount of such payment.

3. The Vendor is selling as beneficial owner.

4. [*Here* (*c*) *insert a clause providing for the payment of unpaid war damage contributions.*]

Avoidance of contract upon Commission failing to approve.

5. The Vendor shall on or before the —— day of —— 19— at his own cost apply for and endeavour to obtain the approval in writing of the War Damage Commission to the assignment of the said value payment to the Purchaser and in case such approval should not be obtained on or before the —— day of —— 19— or such later day as the Vendor and Purchaser shall agree then the sale shall be void and the deposit shall be returned to the Purchaser but without any interest costs or compensation. [*Or,* and in case such approval shall not be obtained the Purchaser shall have an option of purchasing the said land without the said value payment for the sum of £*y* such option to be exercised in writing within four weeks of the refusal of the said Commission to approve the assignment of the value payment and in case the Purchaser shall not exercise the said option within the time aforesaid or such longer period as the Vendor and Purchaser shall agree then the sale shall be void and the deposit shall be returned to the Purchaser but without any interest costs or compensation.]

Incorporation of conditions of sale.

6. The property is sold subject to the Law Society's Conditions of Sale (1934 edition) so far as they are not varied by or inconsistent with the provisions of the agreement.

As witness *etc.*

The Schedule.

[*To contain a description of the property.*]

(*c*) It is advisable to insert provisions providing for the apportionment and payment of war damage contributions as there is considerable doubt as to the respective rights and liabilities of vendors and purchasers under the Act if the matter is not dealt with. Apportionment clauses are to be found *ante,* pp. 329 to 336.

(2)

Conveyance on Sale of Freehold Property which has Suffered War Damage, Together with an Assignment of the Value Payment (*a*) Payable Under the War Damage Act, 1941 (*d*).

Parties. THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part

Recitals: Title; WHEREAS the Vendor was on the —— day of —— 19— the estate owner free from incumbrances in respect of the fee simple of the property hereinafter conveyed on which day the said property suffered war damage

Determination to make value payment. AND WHEREAS on the —— day of —— 19— the determination of the War Damage Commission to make a value payment in respect of the said property under the War Damage Act 1941 became final

Agreement for sale; AND WHEREAS the Vendor has agreed with the Purchaser for the sale to him for the sum of £*x* of the fee simple of the said property together with the said value payment free from incumbrances

Approval of War Damage Commission. AND WHEREAS by notice (*e*) in writing dated the —— day of —— 19— the War Damage Commission approved the assignment of the said value payment to the Purchaser

NOW THIS DEED WITNESSETH in pursuance of the said agreement and in consideration of the sum of £*x* now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) as follows:—

Conveyance of land. 1. The Vendor as beneficial owner hereby conveys unto the Purchaser ALL THAT messuage with the outbuildings gardens and

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(*d*) Stamp *ad valorem*. If under the agreement for sale the purchase price has been apportioned between the land and the value payment, the land should be conveyed to the purchaser in the ordinary way without reference to the damage or to the value payment and the value payment should be assigned by separate deed to the purchaser.

(*e*) The fact that the approval of the Commissioners has been obtained should be recited in order to show that the assignment will be effective under s. 9 (7) of the War Damage Act, 1941. If, however, the conveyance is by trustees to their beneficiaries and no beneficial interest passes the equitable title must be recited. The approval, however, of the Commissioners in this case is not required and this recital accordingly will be omitted.

appurtenances held therewith and known as —— situate at —— all which premises containing in the whole — acres — rods — poles or thereabouts are delineated on the plan annexed hereto and thereon coloured pink TO HOLD the same unto the purchaser in fee simple.

Assignment of value payment.

2. The Vendor as beneficial owner HEREBY ASSIGNS unto the Purchaser ALL THAT value payment payable in respect of the said property hereby conveyed and all interest and other moneys (if any) to be received under the War Damage Act 1941 TO HOLD unto the Purchaser absolutely.

3. [*Acknowledgment of the right to the production of documents.*]

4. [*Certificate as to value.*]

IN WITNESS *etc.*

(3)

Conveyance on Sale of Freehold Property which has Suffered War Damage where the Parties expect the War Damage Commission to make a Value Payment (*a*) which is to be received by the Vendor, the Purchaser charging the Property with Payment of a Sum Equivalent to the Expected Value Payment in the event of a Payment of Cost of Works being made (*f*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part

WHEREAS:—

Recitals: Title;

(1) The Vendor was on the —— day of —— 19— the estate owner in respect of the fee simple of the property hereby assured

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(*f*) Stamp *ad valorem.* The War Damage Act, 1941, does not restrict the sale of property which has suffered war damage, it only restricts dealings in payments under the Act. Therefore, there appears to be no objection to the owner of premises which have suffered war damage selling the site and retaining the value payment, which, unless assigned, under s. 9 (2) is payable to the person who was the owner of the fee when the damage occurred. However, if the Commission has not finally determined to make a value payment provisions must be inserted to meet the case of a payment of cost of works being made as the Commission has a very wide discretion as to the kind of payment it will make.

free from incumbrances on which day the said property suffered war damage.

No determination of Commission.

(2) The War Damage Commission has not yet determined the kind of payment which it will make under the War Damage Act 1941 in respect of such damage but it is apprehended that the said damage involves a total loss (*g*) and that the said Commission will determine to make a value payment.

Agreement for sale.

(3) The Vendor has agreed with the Purchaser for the sale and transfer to him of the said fee simple of the property hereby assured free from incumbrances for the sum of £*x* but such sale is not to extend to include any value payment in respect of war damage.

NOW THIS DEED WITNESSETH in pursuance of the said agreement as follows:—

Conveyance of land.

1. In consideration of the sum of £*x* now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchaser ALL THAT piece or parcel of land known as —— situate at —— all which premises are more particularly described in the Schedule hereto and delineated on the plan annexed hereto and thereon coloured pink TO HOLD unto the Purchaser in fee simple.

Covenants by the purchaser.

2. The Purchaser (*h*) hereby covenants with the Vendor first that the Purchaser will permit the Vendor his servants and agents to enter on the property from time to time for the purpose

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(*g*) Under s. 4 (1) (*a*) where the damage involves total loss a value payment will be generally made; that is to say, making good the damage would be likely to require works costing more than the difference between the value which the hereditament would have had after the execution of the works and the value which the hereditament, with the damage not made good, would have as a site. The War Damage Commission has, however, wide powers under s. 7 for securing the public interest to require a value payment to be used in the acquisition of a building to be used in substitution for the building's damage, or to require the building to be made good and make a payment of cost of works. In the case, however, of ordinary properties not of public importance or necessary to the well-being of the community, it would seem that if there is a total loss a value payment will be made.

(*h*) If the Commission finally determines to make a payment of cost of works it is necessary for the purchaser to covenant to pay to the vendor such additional sum as may be reasonable having regard to the extra payment which will be made to the purchaser.

of enabling the Vendor to obtain any particulars necessary in making his application for a value payment and secondly that in the event of the War Damage Commission determining to make a payment of cost of works in respect of the premises hereby assured then he the Purchaser will within six months of the determination of the Commission becoming final pay to the Vendor the sum of £*y*.

Charge by the purchaser.

3. The Purchaser hereby charges (*i*) the property hereby assured with payment of the said sum of £*y* with interest thereon at the rate of £3½ per cent. per annum from the date when the same shall become payable.

4. [*Acknowledgment for the production of documents.*]

5. [*Statement as to value if required.*]

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain a description of the property.*]

(4)

Conveyance on Sale of Freehold Property which has Suffered War Damage where the Parties expect the War Damage Commission to make a payment of Cost of Works (*a*), with Covenants by the Vendor to Secure to the Purchaser the Payment of a Sum Equivalent to any Value Payment in the event of the War Damage Commission determining to make a Value Payment (*k*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Vendor") of the one part and B of *etc.* (hereinafter called "the Purchaser") of the other part

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(*i*) This creates an equitable charge which should be registered under the Land Charges Act, 1925, s. 10, Class C (iii).

(*k*) Stamp *ad valorem*. This form deals with the converse case to that in Form 3. Here the parties contemplate that a cost of works payment will be made. The purchase price will therefore be the full value of the property. Should the Commission decide to make a value payment, which under the Act will be payable to the vendor, he must pay this sum to the purchaser. It would seem reasonably clear that as the law stands at present the provisions of clause 2 do not amount to an assignment of the value payment and will be enforceable by the purchaser.

WHEREAS:— Recitals:

(1) The Vendor was on the —— day of —— 19— the estate owner in respect of the fee simple of the property hereby assured free from incumbrances on which day the said property suffered war damage. Title;

(2) The said property has as yet not been reinstated in the form in which it was immediately before the occurrence of such damage but it is apprehended that the damage is not such as to involve a total loss and accordingly that the War Damage Commission will make under the War Damage Act 1941 a payment of cost of works to the person by whom the cost of executing the works is incurred. War damage compensation.

(3) The Vendor has agreed with the Purchaser for the sale and transfer to him of the fee simple of the property hereby assured free from incumbrances for the sum of £*x* and has agreed to enter into the covenants hereinafter contained. Agreement for sale.

NOW THIS DEED WITNESSETH in pursuance of the said agreement as follows:—

1. In consideration of the sum of £*x* now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchaser ALL THAT dwelling-house and land held therewith known as —— situate at —— all which premises are more particularly described in the Schedule hereto and delineated on the plan annexed hereto and thereon coloured pink TO HOLD unto the Purchaser in fee simple. Conveyance.

2. The Vendor hereby covenants with the purchaser that if the War Damage Commission shall determine to make a value payment in respect of the war damage to the property hereby assured then he will use his best endeavours to obtain the approval of the said Commission to the assignment of the said payment to the Purchaser and on such approval being obtained he will forthwith duly assign such value payment to the Purchaser and the Vendor hereby further covenants with the Purchaser that in the event of the said Commission refusing to approve the assignment of the said value payment to the Purchaser then he the Vendor at the request and cost of the Vendor will take all reasonable steps to obtain payment to himself Covenants by vendor.

of a value payment in respect of the said property in accordance with the provisions of the said Act and will on the receipt of such payment pay to the Purchaser a sum equal to the said payment less the reasonable costs of the Vendor in obtaining payment of the same and further that the Vendor will at the request and cost of the Purchaser appoint the Purchaser to be his attorney to negotiate for and receive such value payment.

3. [*Acknowledgment for the production of documents.*]

4. [*Statement as to value.*]

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain a description of the property.*]

Form 14.

Appointment of New Trustees of a Will or Settlement. (Short Form) (*a*).

Drafted by A. H. Withers, of Lincoln's Inn.

Parties. THIS APPOINTMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Appointor") of the one part and B of *etc.* (hereinafter called "the New Trustee") of the other part

Recitals: Will; WHEREAS A late of *etc.* deceased (hereinafter called "the Testator") duly made his will dated the —— day of —— 19— and thereby appointed the Appointor and C to be executors and trustees thereof and after making certain dispositions not material to be here recited gave his residuary real and personal estate to his trustees upon the trusts therein set forth

Death of testator; AND WHEREAS the Testator died on the —— day of —— 19— without having revoked or altered his said will which was

(*a*) Stamp. 10s. It would seem that if the trust property includes land which will vest under the implied vesting declaration in the new trustees the stamp should be adjudicated: *Re Robb's Contract*, [1941] 2 All E. R. 200. This is a short form of appointment of new trustees intended to be used in cases where it is desired to avoid long recitals but some record of dealings with the trust and particulars of the existing beneficiaries is desired. These particulars are put in a schedule. This makes the draft itself shorter and enables matters to be recorded which could not as conveniently be recited.

on the —— day of —— 19— proved by the Appointor and the said C in the —— Probate Registry

[*Or*, WHEREAS this appointment is supplemental to an indenture (hereinafter called "the said indenture of settlement") dated the —— day of —— 19— and made BETWEEN the Appointor of the one part and the Appointor and C of the other part being a voluntary settlement made by the Appointor] Settlement;

AND WHEREAS in the First Schedule (*b*) hereto are set forth certain facts and events which it is thought convenient to record Reference to scheduled facts;

AND WHEREAS the trust funds and property now constituting or representing the residuary real and personal estate of the Testator [*or*, subject to the trusts of the said indenture of settlement] consist of the investments and property specified in the Second Schedule hereto State of trust property;

AND WHEREAS C (who is hereinafter called "the Deceased Trustee") died on the —— day of —— 19— at —— Death of trustee;

AND WHEREAS the Appointor is desirous of appointing the New Trustee to be a trustee of the will and codicils of the Testator [*or*, said indenture of settlement] in the place of the Deceased Trustee and jointly with the Appointor Desire to appoint;

AND WHEREAS it is intended that the investments specified in the Second Schedule hereto shall forthwith be transferred into the joint names of the Appointor and the New Trustee Funds to be transferred.

NOW THIS APPOINTMENT WITNESSETH as follows:—

1. THE Appointor in exercise of the power for this purpose given to him by the statute in that behalf and of every or any other power enabling him in this behalf hereby appoints the New Trustee to be a trustee of the said will and codicils of the Testator [*or*, indenture of settlement] in the place of the Deceased Trustee and jointly with the Appointor for the purposes of the said will and codicils [*or*, indenture of settlement] or such of the same purposes as may be subsisting and capable of taking effect.

2. THE vesting declaration implied by statute in this appointment shall not apply to (a) any money (*c*) the payment

(*b*) The Schedule can be omitted when this recital will not be required.
(*c*) See Trustee Act, 1925, s. 40 (4) (a).

whereof is secured by any mortgage of land or (b) any legal (*d*) estate interest or charge which subsists in or affects any land and is vested in or can by assent be transferred by the Appointor as the personal representative of the Testator

3. The New Trustee hereby agrees to become a new trustee as aforesaid.

In witness *etc.*

The First Schedule above referred to (*e*).

Facts and events desired to be recorded.

1. The executors of the Testator duly paid the testator's funeral and testamentary expenses and his debts (so far as they came to the notice of the executors) and the pecuniary legacies bequeathed by his will and duly assented to and satisfied the specific legacies and devises contained in his will.

2. The (*f*) Testator was married once only namely on the —— day of —— 19— at —— to —— and there was issue of such marriage —— children and no more namely:—

(1) ——.

(2) ——.

(3) ——.

3. The Testator's widow died on the —— day of —— 19— at ——.

4. Shortly after the death of the Testator's widow the —— equal parts of the Testator's residuary estate which were by his will given to his —— sons absolutely were duly appropriated and paid out or transferred to such sons.

5. The property specified in the Second Schedule below

(*d*) This clause should be added where the appointment is made by personal representatives so as to avoid any question arising as to whether the appointment operates as an assent.

(*e*) This Schedule may be omitted. It is, however, frequently very convenient to set out from time to time particulars of the estate and of the beneficiaries interested under the trusts. The facts in this Schedule are examples of matters which it may be thought advisable to record. For example, where funds have been set aside to answer annuities particulars should be given.

(*f*) Where there are successive life interests and issue may become entitled it is convenient to record deaths and the dates of birth of any children who may become entitled to share in the trust property.

written is the only property now held on the trusts of the will of the Testator and represents the —— equal parts of the Testator's residuary estate which after the death of the Testator's widow were by his will settled in equal shares on his daughters for life with remainders over as is in the said will provided.

6. All the Testator's daughters are living. [*Add full addresses and descriptions.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

[*Particulars of the investments and property now constituting or representing the Testator's residuary real and personal estate.*]

Form 15.

Deed of Indemnity and Charge by a Husband and Wife to Trustees in respect of the Transfer to the Wife of Property subject to a Covenant to Settle After-acquired Property (*a*).

Parties.

THIS DEED OF INDEMNITY made the —— day of —— 19— BETWEEN A of *etc.* of the first part B the wife of the said A of the second part C of *etc.* and D of *etc.* (hereinafter called "Y's executors") of the third part E of *etc.* (hereinafter called "Z's trustee") of the fourth part and F of *etc.* and G of *etc.* (hereinafter called the "Settlement trustees") of the fifth part

(*a*) Stamp, 10s. As the charge in favour of the respective trustees is unlimited the deed does not require to be stamped *ad valorem* in the first instance: see s. 88 (2), Stamp Act, 1891. This deed is intended to meet the difficulty, so far as it can be met, which frequently arises to-day where a marriage settlement contains a covenant to settle after-acquired property and the parties are anxious not to bring such after-acquired property into settlement. Where there has not been, and there is not likely to be, any children of the marriage, if the ultimate trusts are in favour of the wife or of volunteers (*Re Pryce*, [1917] 1 Ch. 234; *Re Kay's Settlement*, [1939] 1 Ch. 329) the trustees would not run any risk in not enforcing the covenant if the wife were not restrained from anticipation. The restraint on anticipation raises a difficulty. In many cases, however, the trustees are prepared not to enforce the covenant or, where such property is vested in them, to transfer it to the wife. When they are proposing so to act, they should be protected by an indemnity given both by the husband and the wife and a charge on the settled property which they retain.

Recitals: Settlement;

WHEREAS:—

(1) By the Marriage Settlement (hereinafter called "the Settlement") made the —— day of —— 19— upon the marriage of the said A and B between the said A of the first part B (by her then name and description of X spinster) of the second part and the Settlement trustees of the third part certain stocks funds and securities (therein referred to as the husband's trust fund) and the proceeds of sale of certain freehold premises (therein referred to as the wife's settled property) were settled upon the trusts and subject to the powers and provisions therein contained during the lives of the said A and B subject in the case of B to a restraint on anticipation during coverture and afterwards for the issue of their said marriage as therein mentioned and in default of issue upon an ultimate trust as to the said husband's trust fund for the said A absolutely and as to the wife's settled property for the said B absolutely and it was thereby further agreed and declared that all real and personal property not thereby settled to which the said B should at any time during her then intended coverture become entitled whether in possession reversion or otherwise (except as therein mentioned) should (in effect) be brought into the Settlement and become subject to trusts powers and provisions similar to those affecting the wife's settled property.

No issue of marriage;

(2) There has been no issue of the said marriage.

Vesting of after-acquired property;

(3) Upon the death on the —— day of —— 19— of Z the father of the said B one moiety of his estate became under his will vested beneficially in the said B and such estate under his said will has become vested at law in Z's trustee as his executor and trustee.

(4) Upon the death on the —— day of —— 19— of Y the mother of the said B one moiety of her estate became under her will vested beneficially in the said B and such estate under her said will has become vested at law in Y's executors.

Proposal to transfer property to trustees;

(5) Pursuant to the said provision contained in the Settlement for the bringing in of the after-acquired property of the said B Z's trustee and Y's executors have duly transferred or are about to transfer to the Settlement trustees the said respective interests of the said B in the respective estates of her said parents.

(6) The said A and B have requested the Settlement trustees notwithstanding the provisions of the Settlement to transfer to the said B for her own use portions of the said after-acquired property and the Settlement trustees desire and intend from time to time to give effect to such request upon having such indemnity as is hereinafter contained. Request to transfer property to wife;

(7) The intention of the Settlement trustees to give effect to the said request (notwithstanding that it is apprehended that the same would be in breach of trust) having come to the knowledge of Z's trustee and Y's executors those parties respectively have required that the said indemnity should extend to cover all liability (if any such there be) which they or either of them might incur in the premises. Agreement to transfer to wife.

(8) The said A and B in consideration of the premises have agreed to give the indemnity hereinafter contained

NOW THIS DEED WITNESSETH that in consideration of the premises They the said A and B hereby jointly and severally covenant with the Settlement trustees and each of them and also with Z's trustee and Y's executors and each of them that in case at any time hereafter during the continuance of the said coverture the Settlement trustees should upon any such request as aforesaid pay or transfer any part of the said after-acquired property or other property for the time being comprised in or subject to the Settlement to the said B or to any other person or in any such manner as that the same may or will no longer remain subject to the trusts and powers and provisions of the Settlement they will save and keep each of them the Settlement trustees Z's trustee and Y's executors harmless and indemnified from and against all claims demands and proceedings by any person made or taken by reason of such payment or transfer or otherwise under or in relation to the trusts or powers of the Settlement and further that the several interests of them the said covenanting parties under the Settlement (so far as the same are capable of being charged) shall stand charged in aid and support of their said covenant with all moneys (if any) which shall become payable thereunder.

IN WITNESS *etc.*

Form 16.

Will Settling the Residuary Estate of the Testatrix on her Daughter and the Daughter's Family with Wide Powers to Apply Capital for the Benefit of any Beneficiary (*a*).

Drafted by the General Editor.

I, A of *etc.* widow HEREBY REVOKE ALL TESTAMENTARY DISPOSITIONS heretofore made by me AND DECLARE this to be my LAST WILL

Appointment of executors and trustees.

1. I APPOINT X of *etc.* and Y of *etc.* (hereinafter called "my Trustees") to be executors and trustees of this my will.

Pecuniary legacy.

2. I BEQUEATH to my daughter B of *etc.* the sum of £—— free of duty.

Bequest of jewellery and personal effects.

3. I BEQUEATH my jewellery and other articles of personal use and ornament to my said daughter absolutely free of duty and without imposing any binding trust or obligation I request her to give effect to any directions concerning any particular articles of jewellery which I may verbally express to her or which I may leave by any memorandum in writing already signed or hereafter to be signed by me.

Settlement of chattels.

4. I BEQUEATH my furniture plate and plated articles linen china glass books pictures (except as aforesaid) prints and other articles of household use or ornament to my Trustees free of

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(*a*) This will is intended to meet the case of a parent who wants to provide an adequate income for a daughter and her issue. The old system of giving an annuity to the daughter, which could be raised out of capital if the income of the estate was insufficient to pay it, has become a very costly method of providing for a beneficiary. If recourse has to be made to capital, income tax is payable on the capital raised and paid. With tax at its present high figure the drain on capital may be considerable. There is the further difficulty that with the fluctuating value of money it is difficult to foresee what income will be required. The scheme of this will is to give the income upon discretionary trusts for the daughter and her issue with a wide power for the trustees to raise capital for the benefit of the daughter and her issue. Capital so raised and paid will not be subject to income tax. The power being vested in the trustees should prevent the capital being applied for income purposes except where this is really necessary to maintain the daughter and her family in that station of life which the parent would consider proper.

duty Upon trust to allow my said daughter within six months from my death to select from such personal chattels such of the same as she may desire and to have the use and enjoyment thereof during her life and as my Trustees (*b*) in their absolute discretion shall think it reasonable that she should use and enjoy during her life And subject as aforesaid upon the trusts hereinafter declared concerning my residuary personal estate And I declare that an inventory shall be made and shall be signed by my said daughter of such of the said personal chattels as in the opinion of my Trustees shall be by reason of their durable nature and value worth inclusion in an inventory as to which my Trustees shall have absolute discretion and my said daughter shall insure and preserve any personal chattels comprised in any such inventory while she shall have the use and enjoyment thereof but my Trustees shall not be bound to see to the insurance or preservation of nor be responsible for any personal chattel bequeathed by this present clause or for any loss or injury that may happen thereto And I declare that my Trustees if they think fit but only at the request of my said daughter may sell at any time any personal chattel of which my said daughter may at the time of sale have the use and enjoyment and shall apply the net proceeds of the sale either in purchasing other effects of a like nature or by investing the same in any mode of investment hereinafter authorised and any effects purchased shall be held on the same trusts as would have been applicable to the personal chattels sold if the same had not been sold and any investments made shall be held on the trusts hereinafter declared with regard to my residuary trust estate hereinafter defined.

Residuary gift

5. I DEVISE AND BEQUEATH all the real and personal estate of which I can dispose of by this my will including any entailed property whether real or personal of which at the time of my death I may be tenant in tail in possession to my said Trustees Upon trust to sell the said real estate and in their absolute

(*b*) This provision will prevent the daughter taking all the furniture and chattels, which she could otherwise do: *Re Wavertree*, [1933] 1 Ch. 837. It does not, however, prevent the trustees allowing her to have a life interest in the entirety if they think this reasonable.

discretion either to retain in the state and condition in which it shall be at my death or at any time or times to sell call in and convert into money all or any part of the said personal estate not consisting of money And upon trust out of the money to arise from any sale of real estate or sale calling in and conversion of personal estate and out of my ready money to pay my debts and funeral and testamentary expenses (including all legacy duty on any property bequeathed free of duty) and the pecuniary legacies bequeathed by this my will or any codicil hereto and to invest the residue of the said moneys in manner hereinafter authorised and to hold the said residue of the said moneys or the investments representing the same and any real estate for the time being unsold and any personal estate retained (hereinafter collectively called "my residuary trust estate") upon the trusts hereinafter declared concerning my residuary trust estate PROVIDED ALWAYS that any reversionary interest in real or personal estate shall not be sold till the same shall fall into possession unless my said Trustees shall consider that an earlier sale would be beneficial to my estate and while unsold shall be considered as not producing and as incapable of producing any income and no allowance in respect of the retainer thereof unsold shall be made to any person who if the same had been sold would be entitled to the income of the money arising from the sale thereof.

Power to apply capital for the benefit of the daughter and her issue.

6. MY Trustees shall hold my residuary trust estate upon the trusts following that is to say: My Trustees may at any time or times if they think it right or proper so to do and in their absolute and uncontrolled discretion raise and pay out of my residuary trust estate to or for the benefit (*c*) of my said daughter or her children or remoter issue or any of them any sum or sums not exceeding in all one half of the value of my residuary trust estate (such value to be deemed to be the net value thereof immediately after payment of all legacies duties and other payments hereinbefore directed to be made) PROVIDED

(*c*) The word "benefit" has been held to have a very wide meaning and will authorise the trustees to apply capital for practically any ordinary purpose which would be advantageous for any member of the family. Capital sums so applied will not be subject to income tax.

ALWAYS and I hereby declare my Trustees shall not be responsible for seeing to the application of any sum so raised and paid as aforesaid.

Life interest to daughter.

7. SUBJECT as hereinbefore mentioned my Trustees shall during the life of my said daughter hold the income of my residuary trust estate Upon trust for the benefit of such one or more of them my said daughter and her children (*d*) or remoter issue and in such shares and proportions as my Trustees shall in their absolute and uncontrolled discretion think fit it being my wish and desire that my Trustees shall pay and apply such income for the benefit of my said daughter and the advancement maintenance education and benefit of her children or remoter issue as my Trustees shall consider will be of the greatest use and benefit to my daughter and her children or remoter issue or any one or more of such persons.

Ultimate trusts in favour of the daughter's issue.

8. AFTER the death of my said daughter my Trustees shall hold my residuary trust estate and the income thereof Upon trust for all or such one or more of the issue of my said daughter by her present or any future marriage at such age or time or respective ages or times in such shares if more than one and for such interests and in such manner generally as my said daughter by any deed or deeds revocable or irrevocable or by will or codicil shall appoint and in default of and subject to any appointment by my said daughter Upon trust for all or any the children or child of my said daughter by her present or any future marriage who before or after my death being sons or a son attain the age of twenty-one years or being daughters or a daughter attain that age or marry in equal shares between them if more than one PROVIDED ALWAYS that any child of my said daughter who or whose issue shall take any part of my residuary trust estate under any appointment made by my said daughter shall not take any share of the unappointed part of my residuary trust estate without bringing into hotchpot and accounting for the part appointed to him or her or to his

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(*d*) The advantage of authorising the application of income directly for the benefit of children and remoter issue is that income so applied will be the child's income and will not be deemed to be the parents' income and aggregable with the parents' income for income and surtax purposes.

or her issue unless my said daughter shall appoint expressly to the contrary of this proviso.

Power of the trustees to apportion blended funds, etc.

9. My Trustees may conclusively determine what articles pass under any specific bequest contained in this my will or any codicil hereto and subject to the provisions hereinbefore contained whether any moneys are to be considered as capital or income and whether any expenses repairs outgoings or other payments ought to be paid out of capital or income and may apportion blended trust funds and determine all questions and matters of doubt arising in the execution of the trusts of this my will or any codicil hereto and in particular my Trustees may insure all or any the chattels or personal effects subject to the trusts of this my will against war damage (*e*) and may pay the premiums on any such insurance out of the capital or income of my residuary estate as they may think best or most expedient And every such determination whether made upon a question actually raised or implied in the acts or proceedings of my Trustees shall be conclusive and binding on all persons claiming hereunder.

10. I declare that any money at any time liable to be invested under any of the trusts of this my will may be invested in or on and that any investment at any time subject to any of the trusts declared by this my will may be transposed or exchanged into or for (1) Any of the public stocks or funds or Government securities of the United Kingdom of Great Britain and Northern Ireland or India or any Colony (which expression shall mean any Dominion Commonwealth Union Dependency or Colony forming part of the British Empire (except the Irish Free State) or any Province or State being part of any such Dominion Commonwealth Union Dependency or Colony and having a separate local Legislature) or of any foreign Government or State except Russia (2) Any securities the interest on which is or shall be guaranteed by Parliament (3) The purchase or mortgage of freehold or leasehold property in

(*e*) It is advisable to authorise the trustees to insure against war damage. They are under no obligation to do so. Under the War Damage Act, 1941, s. 82, the premiums are payable out of capital. It may be inconvenient to raise such small sums, so it is generally helpful to give the trustees power to pay premiums out of income.

England or Wales such leaseholds in the case of a mortgage having not less than sixty years to run at the time of such investment being made (4) The security of any interest for a life or lives or determinable on a life or lives or any other event in real or personal property in England or Wales together with a policy or policies of assurance on such life or lives or against such event (5) Stock of the Bank of England or Metropolitan stock or London County stock (6) The debentures debenture stock or rentcharge guaranteed or preference stock or shares of any company incorporated by Special Act or by or under any Public General Act or Acts of the Imperial Parliament or of the Legislature of any Colony or by Royal Charter (7) The ordinary or preferred ordinary stock or shares (but not deferred stock or shares) of any such company (8) The debentures debenture stock obligations or securities or preference stock or shares of any foreign railway company dock harbour canal tramway or electric or water or gas supply company in any foreign country or (9) Stocks funds debentures or securities of any public municipal or local body in any part of the world except Russia and the Irish Free State.

Power for professional trustees to charge.

11. Any executor or trustee being a solicitor or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted time expended and acts done by him or any partner of his in connection with the trusts of my will including acts an executor or trustee not being in any profession or business could have done personally.

In witness *etc.*

Form 17.

Clause for Insertion in a Building Agreement with an Architect Providing for the Assignment of the Copyright in the Proposed Building to the Building Owner. Alternative Provisions giving to the Owner a Licence to use the Copyright on any Extension of the Building with Restrictions on the Architect's right to Repeat the Design (*a*).

When the proposed building has been completed and all moneys payable hereunder to A [*architect*] have been duly paid A agrees on the request in writing of B [*building owner*] to assign to B all his copyright and interest in the drawings for the proposed building and his copyright in the said building (*b*).

[*Or*, In the event of B desiring from time to time to extend the proposed building A agrees on the request in writing of B to grant a licence or licences in writing to B to reproduce the proposed building and to use A's plans for such extension.

PROVIDED ALWAYS that the licence or licences to be granted hereunder shall not extend to authorise any reproduction of the proposed building except on land immediately adjoining or adjacent to the proposed building and save as aforesaid A reserves to himself his copyright in the plans for the proposed building and in such building itself].

(*a*) The decisions of Uthwatt, J., in *Meikle* v. *Maufe*, [1941] 3 All E. R. 144, and of Crossman, J., in *Chabot* v. *Davies*, 155 L. T. 525, show that where a building owner employs an architect to erect a building or design a shop front, the architectural copyright under the Copyright Act, 1911, is in the architect and not in the building owner unless the parties agree expressly to the contrary. It follows from this that in the absence of express agreement the building owner is not entitled to reproduce the building either by extending it or by erecting a duplicate elsewhere. It also follows that the architect or his successors in title as the owners of the copyright are entitled to reproduce the building. In many cases this is in accordance with the wishes of the parties. In others, more especially in the case of shops having a distinctive facade to a street, the building owner will wish to be entitled to reproduce the building should circumstances arise in the future which make this desirable. He may also wish to prevent the architect from using the same design for another firm. These clauses are for consideration in this connection and indicate the alternative methods which may be adopted for giving to the building owner the rights otherwise vested in the architect. They will in each case require modification to fit them into the frame of any particular agreement.

(*b*) in *Meikle* v. *Maufe* (*sup.*) it was held that copyright in the building as well as in his plans vested in the architect.

[*Or*, In the event of B desiring from time to time to extend or reproduce the proposed building elsewhere and his not employing A as his architect on the usual terms or in the event of A being then dead A or his personal representatives or assigns will grant a licence in writing to B on payment of the sum of £*x* in respect of each such licence to reproduce the proposed building and to use B's plans.

A HEREBY FURTHER AGREES that he will not reproduce the said plans for the proposed building or the said building without the consent in writing of B.]

Form 18.

Short but Very Wide War-time Power of Attorney enabling Attorney to deal with all the Donor's Property (other than Trust Property).

KNOW ALL MEN BY THESE PRESENTS that I —— of *etc.* APPOINT —— of *etc.* to be my true and lawful attorney for me and in my name or in his own name as he shall think fit to do all or any of the following acts matters and things that is to say:

1. GENERALLY to do all acts matters and things and to sign seal and deliver all deeds and to sign all documents in connection with all or any of my real or personal property and generally to act in connection with my said real and personal property and my affairs and interests as fully as my said attorney could do if he were the absolute beneficial owner of all my real and personal property rights and interests of all and every description including power to sell or grant any other interests whatsoever in any such property rights or interests or to purchase or otherwise acquire any other real or personal property upon such terms as my said attorney shall think fit And also to enter into any such contracts and obligations binding me and my estate as my attorney shall in his absolute and unfettered discretion think fit AND I EXPRESSLY DECLARE that the particular powers hereinafter conferred shall not in any way limit the generality of this present provision but shall be treated only as examples of particular matters or branches of matters with which my said attorney may be called upon to deal.

2. To endorse and pay into my bank any cheques dividend warrants or other instruments whatsoever in connection with any investments owned by me solely or jointly with any other person (whether such investments shall be registered or inscribed in the books of the Bank of England or not) and to draw upon any bank account which may be standing in my name or in the joint names of myself and any other person or persons as fully and effectually as I could do myself and for that purpose to sign any cheques instructions or other documents requisite for the withdrawal of or other dealing with any moneys to the credit of any such account.

3. To enforce payment of any moneys payable to me by any persons and to give receipts for any such payments and to make any payments payable by me.

4. I DECLARE that this power of attorney shall be irrevocable for a period of [one year] from the date hereof.

5. I FURTHER AGREE to ratify and confirm all that my said attorney shall do in purported exercise of the powers conferred on him by these presents.

6. LASTLY I EXPRESSLY DECLARE that no person dealing in good faith with my said attorney shall be concerned to entitled to enquire whether any act matter or thing done by my attorney (whether in respect of any matter hereinbefore referred to or not) or any document executed or signed by my said attorney is authorised by this power of attorney And in favour of any such person all acts matters and things done and all documents signed or executed by my said attorney in my name or in his own name on my behalf (whatsoever the nature thereof and whether within the general or particular powers hereinbefore conferred upon my attorney or not) shall be as valid and effective and as binding upon me for all purposes whatsoever as if the same had been done signed or executed by me in person.

IN WITNESS whereof I have hereunto set my hand and seal this —— day of —— 19—.

SIGNED SEALED AND DELIVERED by the before-named —— in the presence of:

Form 19.

(1)

Deed Apportioning the Principal Moneys Charged on Two Properties Between Such Properties with a View to Avoiding the Necessity for a New Mortgage Requiring Treasury Sanction under the Defence (Finance) Regulations, 1939, reg. 6, on the Sale of One Property (*a*).

Parties. THIS DEED is made on the —— day of —— BETWEEN A Ltd. whose registered office is situate at *etc.* (hereinafter called "the Mortgagees") of the one part and B of *etc.* (hereinafter called "the Borrower") of the other part

Recitals: WHEREAS:—

Mortgage; (1) This deed is SUPPLEMENTAL to a mortgage dated the —— day of —— and made between the Borrower of the one part and the Mortgagees of the other part whereby the land and buildings described in the Schedule hereto together with certain other lands were assured by the Borrower unto the Mortgagees for a term of 3,000 years from the date thereof subject to a proviso for the cesser thereof on payment by the Borrower of the principal sum of £X + Y on the —— day of —— with

(*a*) Stamp 10s. The Defence (Finance) Regulations, 1939, reg. 6, provides, sub-reg. (1), that subject to any exemptions, it shall not be lawful, except with the consent of the Treasury, to make an issue of capital in the United Kingdom or to make in the United Kingdom any public offer of securities for sale. Sub-reg. (5) of reg. 6 provides that any references to "securities" and the "issue of securities" shall include references to any mortgage or charge, whether legal or equitable, and to the creation of or the increasing of the amount secured by any mortgage or charge. The Capital Issues Exemptions Order, 1941, exempts from the restriction imposed by reg. 6 transactions where the consideration involved does not exceed £10,000. Accordingly, it is not possible under these regulations to mortgage property to secure sums exceeding £10,000 except with the consent of the Treasury. Where a legal estate subject to a mortgage is being split up and the purchaser of a part wishes to raise a portion of the purchase-money exceeding £10,000 on mortgage it will frequently be convenient, if the mortgagee consents, to apportion an appropriate part of that mortgage debt to the property purchased so as to avoid the need for obtaining a new mortgage. If this procedure is adopted, the mortgage moneys must be apportioned by deed and, after the conveyance subject to an apportioned part of the mortgaged debt, the vendor must be released from all liability in respect of that part of the debt apportioned to the property sold. This and the three following deeds are intended to carry such an arrangement into effect.

interest thereon at the rate of —— per cent. per annum (liable to be accumulated on non-payment and reducible on payment within the time therein prescribed) and all costs incurred by the Mortgagees in relation to that security

State of mortgage debt;

(2) The said principal sum of £X + Y still remains owing on the security of the said Mortgage but all interest accrued due thereon has been paid

Request to apportion.

(3) For the purpose of enabling the Borrower to complete a contract into which he has entered for the sale to C Ltd. at the price of £Z of the said land and buildings described in the said Schedule subject to the principal sum of £X part only of the said principal sum of £X + Y and the interest thereon and to get in and receive the said purchase price the Borrower has requested the Mortgagees to execute this deed which the Mortgagees have agreed to do

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows that is to say:—

Apportionment of debt.

1. As from the date hereof the said mortgage debt of £X + Y shall be apportioned between the said land and buildings described in the Schedule hereto and the residue of the premises now remaining subject to the said mortgage in manner following That is to say as to £X part thereof to the said land and buildings described in the Schedule hereto and as to £Y the remaining part thereof to the said residue of the premises now remaining subject to the said mortgage and the said land and buildings and the said residue of the premises now remaining subject to the said mortgage shall be charged only with and be redeemable on payment only of the said sums so apportioned to them respectively as aforesaid and the interest thereon respectively.

Continuance of powers and provisions.

2. Subject as aforesaid all the powers and provisions contained in or implied in relation to the said mortgage shall be applicable to the said land and buildings described in the Schedule hereto and the said residue of the premises now remaining subject to the said mortgage as if the same had been separately mortgaged to secure the respective sums so apportioned to them respectively as aforesaid.

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain particulars of that part of the mortgaged premises which is to be charged with £X part of the principal moneys secured.*]

(2)

Conveyance of Freehold Property Subject to an Apportioned Part of the Mortgage Debt Secured Thereon and on Other Premises, the Purchaser Covenanting to Indemnify the Vendor (*b*).

Parties.

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN B of *etc.* (hereinafter called "the Vendor") of the one part and C Ltd. whose registered office is situate at *etc.* (hereinafter called "the Purchasers") of the other part

Recitals:

WHEREAS:—

Title of vendor subject to mortgage;

(1) The Vendor is the estate owner in respect of the fee simple of the property hereby assured subject to a mortgage of the same property together with other premises for securing £X + Y and interest secured by a deed dated the —— day of —— and made between the Vendor of the one part and A Ltd. of the other part by virtue whereof the premises hereby assured became vested in A Ltd. for a term of 3,000 years subject to a provision for cesser upon payment of the principle and interest thereby secured

Agreement for sale;

(2) The Vendor has agreed with the Purchasers for the sale and transfer to the Purchasers of the fee simple of the property hereby assured subject to the principal sum of £X part of the said principal sum of £X + Y but otherwise free from incumbrances for the sum of £Z

Deed of apportionment;

(3) By a Deed of Apportionment of Mortgage (hereinafter called "the Apportionment Deed") dated the —— day of —— 19— and made between A Ltd. of the one part and the Vendor of the other part after recitals to the effect that with a view to enabling the Vendor to carry into effect the said contract for sale it was agreed between A Ltd. and the Vendor

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(*b*) Stamp *ad valorem* on the purchase-moneys and the mortgage debt. See note (*a*), *ante*, p. 377.

that the said mortgage debt of £X + Y should be apportioned between the said property hereby assured and the residue of the premises then remaining subject to the said mortgage in manner thereinafter appearing and that the sum of £X + Y still remained owing on the security of the said mortgage it was agreed that as from the date thereof the said mortgage debt of £X + Y should be apportioned between the property hereby assured and the residue of the said premises then remaining subject to the said mortgage in manner following that is to say as to £X part thereof to the property hereby assured and as to £Y the remaining part thereof to the said residue of the premises then remaining subject to the said mortgage and that the said property hereby assured and the said residue of the premises then remaining subject to the said mortgage respectively should be charged only with and be redeemable on payment only of the said sums so apportioned to them respectively as aforesaid and the interest thereon respectively and that subject as aforesaid all the powers and provisions contained in or implied in relation to the said mortgage should be applicable to the property hereby assured and the said residue of the premises then subject to the said mortgage as if the same had been separately mortgaged to secure the respective sums so apportioned to them respectively as aforesaid.

State of mortgage debt.

(4) The said apportioned sum of £X so charged as aforesaid on the lands and buildings hereby assured remains owing to A Ltd. on the security of the said mortgage but all interest thereon has been paid up to the date of this deed

NOW THIS DEED WITNESSETH as follows:—

Conveyance.

1. IN pursuance of the said agreement and in consideration of the sum of £Z now paid by the Purchasers to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner hereby grants unto the Purchasers ALL THAT piece or parcel of land situate at —— in the county of —— coloured pink on the plan hereto annexed as the same is more particularly described in the Schedule hereto TO HOLD unto the Purchasers in fee simple subject to the said mortgage term and the payment of the said sum of £X now owing as

aforesaid upon the security of the same term and the interest henceforth to accrue due in respect thereof.

Purchasers covenant to indemnify vendor.

2. The Purchasers hereby covenant with the Vendor that the Purchasers will pay to A Ltd. on such payment being lawfully demanded the said principal sum of £X so owing on the security of the said recited mortgage as apportioned by the said Apportionment Deed and the interest now and henceforth to become due in respect thereof and will at all times keep the Vendor and his estate and effects indemnified against the same and every part thereof and all actions proceedings costs charges claims and demands whatsoever in respect thereof.

3. [*Acknowledgment for the production of documents.*]

In witness *etc.*

The Schedule.

[*To contain particulars of the property assured.*]

(3)

Deed of Covenant by the Purchaser of part of Mortgaged Premises with the Mortgagee to Pay an Apportioned Part of the Mortgage Debt (*a*).

Parties. THIS DEED is made on the —— day of —— 19— BETWEEN C. Ltd. whose registered office is situate at *etc.* (hereinafter called "the Purchasers" which expression shall include their successors and assigns where the context so requires or admits) of the one part and A. Ltd. whose registered office is situate at *etc.* (hereinafter called "the Mortgagees" which expression shall include their successors and assigns where the context so requires or admits) of the other part

Recitals: WHEREAS:—

mortgage; (1) This deed is supplemental to a mortgage dated the —— day of —— and made between B of the one part and the Mortgagees of the other part whereby the land and buildings described in the schedule to the deed of apportionment hereinafter recited together with certain other lands were assured by the said B unto the Mortgagees for a term of 3000 years from the date of the said mortgage subject to a provision for the cesser thereof on payment by the said B to the Mortgagees of the principal sum of £X + Y on the —— day of —— with interest thereon in the meantime at the rate of £6 per centum per annum reducible to £5 per centum per annum as therein mentioned

state of mortgage debt; (2) At the date of the deed next hereinafter recited the said principal sum of £X + Y only remained owing on the security of the said mortgage

deed of apportionment; (3) By a deed of apportionment dated the —— day of —— 19— and made between the Mortgagees of the one part and B of the other part which contained (amongst other recitals) a recital that for the purpose of enabling him to complete a contract he had entered into for the sale to the Purchasers of the land and buildings described in the schedule thereto subject

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(*a*) Stamp 10s. See note (*a*), *ante*, p. 377.

to the principal sum of £X part only of the said principal sum of £X + Y and the interest thereon and to get in and receive the same the said B had requested the Mortgagees to execute that deed it was agreed and declared that the said mortgage debt of £X + Y should be apportioned between the land and buildings described in the said schedule thereto and the residue of the premises then remaining subject to the said mortgage in manner following that is to say:—(i) as to £X part thereof to the said land and buildings described in the schedule to the said deed of apportionment and (ii) as to £Y the remaining part thereof to the residue of the premises then remaining subject to the said mortgage and that the said land and buildings and the said residue of the premises then remaining subject to the said mortgage should respectively be charged only with and redeemable on payment only of the said sum so apportioned to them respectively as aforesaid and the interest thereon respectively

conveyance of part of premises;

(4) By a conveyance on sale dated the —— day of —— and made between the said B of the one part and the Purchasers of the other part the said land and buildings described in the schedule to the hereinbefore recited deed of apportionment were conveyed by the said B to the Purchasers in fee simple subject to the said mortgage term and the payment of the said sum of £X and the interest thereon and otherwise subject as therein mentioned

reduction of debt and agreement for alteration of interest rate.

(5) Since the date of the hereinbefore recited conveyance the Purchasers have paid to the Mortgagees the sum of £Z in reduction of the said mortgage debt of £X and the sum of £X – Z only now remains owing on the security of the said land and buildings and it has been agreed that the rate at which interest is payable thereon shall be reduced from £6 per centum per annum (reducible to £5 per centum per annum) as mentioned in the said mortgage to £5¾ per centum per annum (reducible to £4¾ per centum per annum as hereinafter mentioned) and that the Purchasers shall enter into the covenants with the Mortgagees hereinafter contained.

NOW THIS DEED executed in pursuance of the said agreement and in consideration of the premises WITNESSETH as follows that is to say:—

Purchasers' covenants: to pay principal and interest.

1. THE Purchasers hereby covenant with the Mortgagees to pay to them on the —— day of —— next the sum of £X – Z with interest thereon in the meantime at the rate of £5 15s. per centum per annum computed from the date hereof (reducible as hereinafter mentioned) AND ALSO so long after that day as any principal moneys remain due under this deed or on any judgment which may be recovered hereunder to pay to the Mortgagees interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year.

to repair and insure.

2. THE Purchasers hereby covenant with the Mortgagees that they will at all times during the continuance of the security created by the said mortgage and deed of apportionment keep the buildings and erections for the time being on the said land so conveyed to them as aforesaid in good and substantial repair and insured against loss or damage by fire in the full value thereof and against loss of rents consequent upon any such loss or damage by fire in a sum equal to the amount of a year's rents from time to time of the said premises in the office of the —— Company or in some other office approved by the Mortgagees in the joint names of the Mortgagees and the Purchasers and will punctually pay every sum from time to time payable for keeping on foot every such insurance and permit the Mortgagees to retain the policy or policies of such insurance and also the receipt for every such payment AND that in default the Mortgagees may repair and put into and keep in good and substantial repair and condition and also insure and keep insured the said buildings and erections in the values aforesaid or less and either in the said office of the —— Company or in that of any other insurance company and that the Purchasers will repay to the Mortgagees on demand all premiums moneys expenses and other sums payable for the purposes aforesaid or any of them with interest at the said rate of £5 15s. per centum per annum from the time of each payment (such interest to be reducible in the same way as the interest on the said principal sum of £X – Z on payment of the same within thirty days of such payment being made by the Purchasers as aforesaid) and that until payment the premises for the time

being subject to the said security shall stand charged with the amount to be repaid and the interest thereon as aforesaid.

Insurance against aircraft.

3. It is hereby agreed and declared that the provisions herein contained as to insurance against fire shall extend to aircraft and any other risk against which the Mortgagees consider insurance ought to be effected except war damage as defined by the War Damage Act 1941.

War damage contributions.

4. The Purchasers hereby covenant with the Mortgagees that the Purchasers will during the continuance of the said security duly and punctually pay every instalment of the contribution payable under the War Damage Act 1941 or any statutory extension modification or re-enactment thereof for the time being in force.

5. It is hereby further agreed and declared:—

Accumulation of arrears of interest.

(a) That if and whenever any interest accruing due under this deed shall be unpaid for a space of thirty days after the same shall become due the Mortgagees may accumulate the same from time to time by making half-yearly rests so that such accumulations shall bear compound interest after the rate aforesaid computed from the time or respective times of such unpaid interest accruing due

Reduction of interest.

(b) That if and whenever any interest payable under this deed shall be paid at the rate of £4 15s. per centum per annum within thirty days after interest at the higher rate aforesaid shall have become due and there shall not be any breach of any obligation statutory or otherwise binding on the Purchasers or of any of the covenants whether expressed or implied herein contained and on the part of the Purchasers to be observed and performed (other than the covenant for payment of the principal money and interest hereby secured) then such payment shall be accepted in lieu of and in full satisfaction for the interest at the higher rate aforesaid payable under the covenants herein contained but no claim for reduction under this proviso shall be made in respect of any payment of interest not made within the time aforesaid.

6. It is hereby also agreed and declared as follows:—

Restrictions on consolidation and leasing.

(i) Section 93 of the Law of Property Act 1925 dealing with the consolidation of mortgages shall not apply to the security

(ii) No lease or letting by the Purchasers for a term exceeding six months of the said premises or any part or parts thereof or any agreement therefor shall during continuance of the said security have any force or validity by virtue of any statutory enactment or otherwise unless the Mortgagees shall have previously given their consent in writing but such consent shall not be unreasonably withheld in the case of a proper and responsible tenant.

Provision for reduction of mortgage debt.

7. THE Purchasers hereby covenant with the Mortgagees that the Purchasers will on the —— day of —— 19— and on every subsequent —— day of —— pay to the Mortgagees the sum of £—— in reduction of the principal money for the time being owing on the said security PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that this covenant is intended to be in addition to the covenant contained in clause 1 thereof and this covenant shall operate without prejudice to that covenant and so as not in any way to limit the liability of the Purchasers under that covenant to pay the whole of the said principal sum of £X – Z on the —— day of —— next or to constitute the said security a security for any fixed period or in any way to abridge limit or curtail the rights and remedies of the Mortgagees in relation to the said security Provided further and it is hereby agreed that the Purchasers may at any time upon giving to the Mortgagees six months' previous notice in writing repay to the Mortgagees the whole of the principal moneys then owing on the said security.

IN WITNESS *etc.*

(4)

Deed Releasing the Borrower from All Liability in Respect of that Portion of the Mortgage Debt Apportioned to the Property Sold (*c*).

THIS DEED is made the —— day of —— 19— BETWEEN A Ltd. whose registered office is situate at *etc.* (hereinafter called "the Mortgagees") of the one part and B of *etc.* (hereinafter called "the Borrower") of the other part Parties.

WHEREAS:— Recitals:

(1) This deed is supplemental to a mortgage dated the —— day of —— 19— and made between the Borrower of the one part and the Mortgagees of the other part whereby in consideration of the sum of £X + Y paid by the Mortgagees to the Borrower the Borrower covenanted with the Mortgagees to pay to them on a day now long past the principal sum of £X + Y with interest thereon at the rate therein mentioned and the lands and premises therein described were assured by the Borrower unto the Mortgagees for a term of 3,000 years from the date thereof by way of mortgage for securing the payment by the Borrower to the Mortgagees of the said principal sum and interest in accordance with the said covenant. Mortgage;

(2) The Borrower had agreed with C Ltd. for the sale to it of part of the premises then comprised in the said Mortgage subject only to £X part of the mortgage debt of £X + Y which was then owing to the Mortgagees on the security of the said mortgage and the interest thereon and it was agreed between him and the mortgagees that for the purpose of enabling him to perform the said agreement for sale the said mortgage debt of £X + Y should be apportioned between the part of the said premises so agreed to be sold and the residue of the said premises then comprised in the said mortgage in manner provided by the next hereinafter recited deed. Agreement for sale;

(3) By a deed dated the —— day of —— 19— and made between the Mortgagees of the one part and the Borrower of Deed of apportionment;

(*c*) Stamp 10s. See note (*a*), *ante*, p. 377.

the other part the said mortgage debt of £X + Y was apportioned as to £X part thereof to the said premises so agreed to be sold as aforesaid and as to £Y the other part thereof to the residue of the said premises then comprised in the said mortgage.

Conveyance; (4) The said premises so agreed to be sold as aforesaid have been conveyed by the Borrower to C Ltd. in fee simple subject to the said sum of £X part of the said mortgage debt of £X + Y and the interest thereon and C Ltd. paid the sum of £Z to the Mortgagees in reduction of the said sum of £X and have covenanted with the Mortgagees for the payment to the Mortgagees of the sum of £X – Z with interest thereon.

Request for release. (5) The Borrower has requested the mortgagees to execute such release as is hereinafter contained.

Release. NOW THIS DEED WITNESSETH that in compliance with the said request and in consideration of the premises the Mortgagees hereby release the Borrower from liability for payment of the said sum of £X and the interest thereon PROVIDED ALWAYS that nothing herein contained shall affect the liability of the Borrower for payment of the said sum of £Y and the interest thereon or any of the powers or remedies of the Mortgagees for recovering or enforcing payment thereof.

IN WITNESS *etc.*

Form 20.

Lease for Twenty-one Years where the Tenant is to be Responsible for Repairs. Power for Tenant to Determine at the end of the 7th or 14th year (*a*).

THIS LEASE is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Landlord[s]" which expression where the context so admits shall include the reversioner for the time being immediately expectant on the term hereby created) of the one part and B of *etc.* (hereinafter called "the Tenant[s]" which expression where the context so admits shall include the persons in whom the term hereby granted shall become vested from time to time) of the other part WITNESSETH as follows:— Parties. Witnesseth.

1. THE Landlord[s] demise[s] unto the Tenant[s] ALL THAT [*here insert description of premises*] [TOGETHER with the right in common with the Landlord[s] and all other persons now or hereafter authorised in that behalf of ingress egress and regress to and from the demised premises by means of [*here insert description of means of access*]] Demise. Parcels.

EXCEPT AND RESERVED out of this demise (i) The passage and running of water and soil gas and electricity by and through the drains pipes or wires running through or under the demised premises and all other easements or other rights in the nature of easements or quasi easements now (*b*) enjoyed by any adjoining or neighbouring property (ii) All rights of light or air which would or might tend to restrict the free user and development of the neighbouring land or premises by building or reconstruction or additions or other purposes of development TO HOLD the same unto the Tenant[s] from the —— day of —— 19— for the term of twenty-one years (determinable as hereinafter provided) PAYING therefor the yearly rent of £—— by equal quarterly instalments [in advance] the first payment being a due proportion for the period from Exceptions. Habendum.

(*a*) Stamp *ad valorem* on the rent.

(*b*) If the landlord wants to have the right to fix new pipes and wires this right must be expressly reserved.

the —— day of —— to the next succeeding quarter day to be made on the —— day of —— and thenceforth on the usual quarter days [in advance] AND ALSO PAYING by way of further rent (*c*) from time to time a sum of money equal to the amount which the Landlord[s] may expend in effecting or maintaining the insurance of the building [of which the said premises forms part] and six months' rent in respect of loss or damage by fire aircraft and explosion [and the plate glass] against usual risks such last mentioned rent to be paid without any deduction on the quarter day for payment of rent ensuing after the expenditure of the amount aforesaid.

Tenants covenants:

2. THE Tenant[s] [JOINTLY AND SEVERALLY] COVENANT[S] with the Landlord[s] as follows:—

To pay rent;

(1) To pay the reserved rent on the days and in manner aforesaid

To pay rates;

[(2) (*d*) To defray all existing and future rates taxes assessments and outgoings payable by law in respect of the demised premises (except property tax and tithe rentcharge or tithe redemption annuity)]

To keep in repair;

(3) To keep (*e*) the demised premises including the drains sanitary and water apparatus and all fixtures and additions thereto (including all alterations and additions hereinbefore referred to) properly and substantially repaired and amended and in a condition suitable for letting to a tenant at a rack rent throughout the term and in such repair and condition to yield up at the determination of the tenancy

To paint;

(4) To paint (*f*) with three coats of good oil paint in a

(*c*) This additional rent will be taken into account for the purpose of the assessment for Schedule A tax: *House and Property Investment Trust, Ltd.* v. *Kneen*, [1938] 2 K. B. 274.

(*d*) If this provision is inserted it must be remembered that it is not limited to outgoings of an annual or recurring nature, but extends to works of permanent improvement, *e.g.*, road-making charges.

(*e*) This covenant does not extend to war damage, see the Landlord and Tenant (War Damage) Act, 1939, s. 1, unless neither party to the lease is liable under that Act to repair such damage, when, if a payment of cost of works is to be made, the party liable under the lease to repair may be liable under the Landlord and Tenant (War Damage) (Amendment) Act, 1941, s. 5 (4) to reinstate the property.

(*f*) If this is an underlease the dates for painting, etc., must be made to coincide with those in the head lease, and any other necessary clauses inserted to accord with the superior lease.

workmanlike manner all the wood iron and other parts of the demised premises heretofore or usually painted as to the external work once in three months immediately preceding the —— day of —— 19— and once in the three months immediately preceding the expiry of each subsequent third year of the said term and also on the determination of the said term howsoever determined and as to the internal work in the last three months of each seventh year of the said term and in any case on the determination of the said term howsoever determined and after every internal painting to grain varnish distemper wash stop whiten and colour or otherwise decorate all such parts as have previously been so dealt with and to repaper with suitable paper of as good quality as that in use at the commencement of the tenancy the parts previously papered or which ought to be papered

To comply with statutory requirements;

(5) To do all acts necessary for the purpose of complying in all respects with the provisions of all statutes for the time being in force and the requirements of any competent authority and to keep indemnified the Landlord[s] against all actions suits or other proceedings claims or demands which may be brought or made by reason of the provisions of such statutes or requirements or any default in compliance therewith

To pay share of cost of upkeep of drains.

(6) To pay a fair proportion of the expense payable in respect of repairing and cleansing all sewers drains walls or other parts of the demised premises the use of which is common to the demised premises and to other premises

Not to alter premises;

(7) (*g*) Not except as hereinbefore provided to make in or upon the demised premises or any part thereof whether internally or externally any alterations additions or new erections whatsoever at any time during the said term

To prevent acquisition of rights of light;

(8) Not to permit any owner of any adjoining or adjacent premises to acquire any right of light or air over the demised premises but to inform the Landlord[s] of any attempt which may be made to acquire such right or of any new windows

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(*g*) This clause is somewhat stringent and when advising a tenant it is desirable to limit its provisions to "structural" alterations. If this is not done, the landlord's consent will be required to minor interior alterations, such as the installation of partitions, new grates, etc.

opened in such adjoining or adjacent property and to permit the Landlord[s] to do all acts and things which may be necessary to prevent the acquisition of any such right as aforesaid and to enter the demised premises for the purpose of doing the same

Not to use machinery;

(9) That no engine or machinery shall be used in the Tenants business or be or remain upon the said premises

To permit landlord to enter and view premises;

(10) To permit the Landlord[s] and his [their] agents with or without workmen and others at reasonable times to enter upon and view the condition of the demised premises that the Tenant[s] will forthwith (so far as the Tenant[s] is [are] liable) execute all repairs and works required to be done by written notice given by the Landlord[s] Provided always that if the Tenant[s] shall not within thirty days after service of such notice commence (or forthwith if necessary for the preservation of any part of the demised premises or otherwise urgently required) and proceed diligently with the execution of repairs and works for which the Tenant[s] is [are] liable hereunder and mentioned in such notice it shall be lawful for the Landlord[s] to enter upon the demised premises and to execute such repairs and works and the expenditure in respect thereof including surveyors fees for inspections reports and supervision shall be a debt due from the Tenant[s] to the Landlord[s] and forthwith recoverable by action with interest thereon at 5 per cent. per annum from the date of such expenditure

Restriction as to user;

(11) Not to use the demised premises for any purpose except that of [*here insert particulars of permitted user*]

Not to permit a nuisance;

(12) Not to do or permit or suffer to be done any act matter or thing in or upon the demised premises or any part thereof which may be or grow to be a nuisance annoyance or damage to the landlord[s] or the tenants or occupiers of adjacent property or other property in the neighbourhood

Not to exhibit notices;

(13) Not to affix or exhibit or permit to be affixed or exhibited to or upon any part of the exterior of the demised premises any placard notice poster signboard plate or other advertisement [except such as shall have been submitted to the Landlord[s] and previously approved (*h*)]

(*h*) This exception is required in the case of trade premises.

(14) Not to hold or permit to be held any sale by auction on the demised premises — Not to hold an auction;

(15) Not to assign underlet or part with the possession of the demised premises or any part thereof Provided that consent to any assignment underletting or parting with possession of the whole of the demised premises to a respectable and responsible assignee or undertenant shall not be unreasonably withheld — Not to assign;

(16) During the six calendar months immediately preceding the determination of the term hereby granted to permit the Landlord[s] or his [their] Agents to affix upon any part of the demised premises a notice as to the proposed reletting or other disposal thereof and during the same six calendar months to permit intending tenants or purchasers at reasonable times of the day to view the premises — To permit landlords to affix notice;

(17) To yield up the demised premises with the fixtures and additions thereto and including (subject as aforesaid) the alterations and additions hereinbefore referred to at the determination of the said term in good and tenantable repair and condition in accordance with the covenants by the Tenant[s] hereinbefore contained — To yield up premises;

(18) To pay all expenses (including solicitors costs and surveyors fees) incurred by the Landlord[s] incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or any statutory provision replacing the said section notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court — To pay expenses incurred under s. 146 of the Law of Property Act, 1925;

(19) That nothing shall be done whereby the policy or policies of insurance on the demised premises against damage by fire for the time being in force may become void or voidable or whereby the rate of premium thereon may be increased and that the Tenant[s] will pay to the Landlord[s] all sums paid by way of increased premiums and all expenses incurred by the Landlord[s] in or about any renewal of such policy or policies rendered necessary by a breach of this covenant — Not to increase cost of insurance;

(20) Within one calendar month after the execution thereof to produce to the Landlords solicitor for the time being any assignment mortgage charge probate letters of administration — To produce assignments to landlord.

underlease (or devolution of any such underlease) of the premises hereby demised and to pay him a fee of £2 2s. for registering the same in respect of each lease comprised therein.

Landlords covenants:

3. THE LANDLORD[S] HEREBY COVENANT[S] with the Tenant[s] as follows:—

To pay outgoings;

[(1) (*i*) To defray all existing and future rates taxes assessments and outgoings other than payments for gas or electricity [or water charges] charged or assessed upon or payable in respect of the premises either by the owner or the occupier thereof]

For quiet enjoyment;

(2) That the Tenant[s] paying the rent hereby reserved and observing and performing the several covenants and stipulations herein on his [their] part contained shall peaceably hold and enjoy the demised premises during the said term without any interruption by the Landlord[s] or any person rightfully claiming under or in trust for him [them]

To insure;

(3) (*k*) To insure and (unless the insurance so effected shall become void or voidable through or by reason of any act or default of the Tenant[s] or any sub-tenant or servant or licensee of any tenant) to keep insured the building [of which the demised premises form part] against loss or damage by fire aircraft and explosion (other than fire occasioned by or happening through invasion foreign enemy riot or civil commotion) and the plate glass against all risks covered by the usual tariff or Lloyd's insurance policy in such amount as the Landlord[s] shall think fit in such insurance office or offices or with Lloyd's or such other insurers as the Landlord[s] shall from time to time think fit and in case of damage by fire aircraft or explosion to the demised premises to expend in rebuilding or reinstating the premises all moneys received by virtue of such insurance.

4. PROVIDED ALWAYS AND IT IS HEREBY EXPRESSLY AGREED as follows:—

(*i*) This clause is only required if the rent is inclusive. The clause must be omitted if No. 2 of the tenant's covenants is inserted.

(*k*) This clause is only to be inserted if the tenant pays the insurance premium.

Power to re-enter.

(i) If the rent hereby reserved or any part thereof shall at any time be unpaid for fourteen days after becoming payable whether formally demanded or not or if the covenants on the Tenants part therein contained shall not be performed or observed or if the Tenant[s] [or either of them] or any person in whom for the time being the term hereby created is vested shall become bankrupt or in the case of a corporation enter into liquidation or pass a resolution for winding up or enter into an agreement or make any arrangement with his [their] creditors for liquidating of his [their] debts by composition or otherwise or suffer any distress or process of execution to be levied upon his [their] goods and not paid out within four days thereafter then and in any of the said cases it shall be lawful for the Landlord[s] at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to the right of action of the Landlord[s] in respect of any antecedent breach of the Tenants covenants herein contained

Postponement of rent in case of fire.

(ii) (*l*) In case the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire so as to be unfit for occupation and use and the policy or policies effected by the Landlord[s] shall not have been vitiated or payment of the policy moneys refused in whole or in part in consequence of some act or default of the Tenants the rents hereby reserved or a fair proportion thereof according to the nature and extent of the damage sustained shall as from six calendar months after such destruction or damage be suspended until the said premises shall be again rendered fit for occupation and use And in case of difference touching this provision the same shall be referred to the award of a single arbitrator in case the parties can agree upon one and otherwise to be appointed by the President for the time being of the Surveyors Institute on the application of either party and in either case

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(*l*) This provision should only be inserted if the Tenant is to pay the premium in respect of loss of six months' rent owing to damage by fire as in clause 1.

the Arbitration Acts 1889 to 1934 and any statutory modifications thereof for the time being in force

No compensation for improvements.

(iii) As part of the consideration for the grant of this lease it has been agreed by the Tenant[s] that no compensation shall be payable to the Tenant[s] in respect of any improvements effected by the Tenant[s] to the demised premises

Power to determine.

(iv) If the Tenant[s] shall be desirous of determining the term hereby granted at the expiry of the seventh or fourteenth year thereof and of such the Tenants desire shall give to the Landlord[s] at least six calendar months previous written notice then on the expiry of such seventh or fourteenth year as the case may be the term hereby granted and everything herein contained shall cease and be void but without prejudice to the rights of either party in respect of any antecedent breach or non-performance of the Landlord[s] or Tenant[s] obligations hereunder.

Notices

5. This deed shall be deemed to incorporate the regulations as to notices contained in section 196 of the Law of Property Act 1925.

In witness *etc.*

Form 21.

Agreement for the Full Time Employment of a Traveller or Canvasser (*a*).

An AGREEMENT made the —— day of —— BETWEEN The A B Co. Ltd. whose registered office is situate at —— (hereinafter called "the Company") of the one part and Z of *etc.* (hereinafter called "the Employee") of the other part WHEREBY IT IS AGREED as follows:— Parties.

1. The Company shall employ the Employee and the Employee shall serve the Company as salesman from the —— day of —— until such employment is terminated as hereinafter provided. Agreement for employment.

2. The Employee shall perform such services as are assigned to him by the Company from time to time He shall work in such part of England or Wales as the Company may from time to time direct and he may be moved at any time from one district to another. Nature of employment.

3. The Employee shall live in or as near as possible to the district in which he is working for the time being If the Employee is required to move from one district to another the Company shall pay his travelling expenses If the Company instructs the Employee to use a conveyance the Company shall pay the cost of such conveyance from the place where the Employee reports for instructions in the morning to and from the area where he is to work during the day. Residence of employee.

[*or* The reasonable travelling expenses and hotel bills of the Employee incurred in connection with his work for the Company shall be paid by the Employee who shall be entitled to be reimbursed such expenses and bills provided that the same shall not exceed the scale of travelling allowances and hotel expenses from time to time fixed by the Company The payment to the Employee of approved expenses and bills shall be made by the Company within ten days of the receipt by Travelling expenses.

(*a*) Stamp 6d. This agreement is intended as a short form for use in the case of employees serving as travellers at a small salary, where an elaborate agreement is inappropriate.

them of the account and the vouchers for such expenses and bills The Company shall not be bound to reimburse to the Employee the said expenses and bills unless the Employee shall send to the company an account and vouchers for such expenses and bills in the week immediately following that in which they were incurred.]

[*or* The Company shall pay to the Employee in lieu of all travelling expenses hotel bills and all expenses arising out of or incidental to his employment an allowance at the rate of —— shillings per day while the Employee shall be travelling within a radius of —— miles from —— and —— shillings per day while he shall be travelling outside the said radius such allowance to be in addition to the remuneration to which he is entitled hereunder.]

Hours of work.

4. The Employee shall work 44 hours per week and in addition such further time as is required to write a memorandum containing full particulars of the orders he has obtained and to complete any other necessary clerical work The time for beginning and ending work shall be fixed by the Company from time to time and the said hours of work may be spread over six or five days as the Company may determine The said 44 hours shall be calculated from the hour fixed for the Employee to report for work in the morning or from such other hour as the Company may from time to time determine.

Reports of work done.

5. The Employee shall subject to the control of the Company keep proper books of account and make due and proper entries of the price of all goods sold and all transactions and dealings of and in relation to his employment [and shall at the end of every working day send to the Company a full and complete list of all orders taken and the names of the buyers and at the end of every week shall send a report containing a list of the towns and places visited and the aggregate amount of the orders booked for each item (if any) on the current price list.]

Correspondence.

6. [The Employee shall deliver over to the Company all letters and correspondence in any manner relating to the business of the company immediately upon the receipt thereof and shall use his influence to induce customers and others to

address all correspondence relating to the business to the Company and not to himself.]

7. The Employee shall give his best attention to his work and shall not during this employment engage in any other work without the previous consent in writing of the Company.

8. The Company shall pay the employee at the rate of £—— per week [month] irrespective of where he may be employed [AND FURTHER the Employee shall be allowed a commission of £—— per cent. on all sales [above the sum of £—— per week [month]] which the Employee may make or effect for or on behalf of the Company in addition to his weekly [monthly] salary of £——] PROVIDED (*b*) ALWAYS that while the Employee is away from work from whatever cause he shall not be entitled to any pay unless the Company in its absolute discretion decides otherwise. Remuneration.

9. [The Employee shall pay the sum of £—— as liquidated damages to the Company for every day during which he shall absent himself from their service without their consent for any reason other than sickness or other unavoidable cause.] Absence without leave.

10. The Employee shall not work longer hours than those stipulated herein without the consent of the Company and if any overtime is worked at the Employee's request and for his own purposes it shall not be chargeable as overtime Overtime for the Company's purposes shall only be worked when authorised in writing by the Company and in such cases shall be paid for at the rate of —— per hour. Overtime.

11. After a year's service with the Company the Employee shall be entitled to a week's holiday with full pay exclusive of Bank Holidays and other national holidays and shall thereafter be entitled after every completed year's service to a week's holiday with full pay exclusive of Bank Holidays and other national holidays The date of such holidays shall be fixed by the Company. Holidays.

(*b*) This clause is desirable in view of the fact that an employee is entitled to be paid his full salary during illness until his agreement of service is terminated: *Cuckson* v. *Stone*, 1 E. & E. 248; *Marrison* v. *Bell*, 160 L. T. 276. If a provision such as this is inserted the company can pay its employee during illness such sum as it thinks just, and should this be less than his full salary, the employee will not be able to claim the balance.

Termination of agreement.

12. The said employment may be terminated by the Company or the Employee by one week's [month's] notice. Such notice may be given on any day of the week and in case the said employment is terminated in the middle of a week [month] a proportionate part only of the week's [month's] wages shall be payable in respect of the days worked in such week [month].

Commission on termination of agreement.

13. [On the termination of this agreement the Employee shall be entitled to receive any commission earned by him up to that date but shall not be entitled to receive any commission on any further business or orders received from any customer on whose orders the agent would if still in the service of the Company have been entitled to receive commission.]

Complaints.

14. Any complaint or claim of any sort which the Employee may desire to make shall be made in writing by the Employee to the Company at the end of any week during which the cause of any such complaint or claim arises and if no such complaint is so made the Employee shall thereafter be deemed to have no ground for any complaint or claim not so made.

Trade secrets.

15. The Employee shall not divulge to any person not employed by the Company any information relating in any way to his work or his movements or intended movements in connection with his work.

Employee not to solicit customers.

16. The Employee shall not on the termination of this agreement for the period of —— years from the date of such termination solicit orders directly or indirectly from any of the then customers of the Company or from any of those persons who had been customers at any time within the preceding year from such termination.

Arbitration.

17. In the event of any dispute arising out of or in relation to this agreement the same shall be decided by arbitration in accordance with the provisions of the Arbitration Acts, 1889 to 1934.

As witness.

Form 22.

LANDLORD AND TENANT (REQUISITIONED LAND) ACT, 1942 (*a*).

I.

Notice of Disclaimer by Tenant to Landlord under Section 1 (1) (*b*).

To A [*landlord*] of *etc.*

I, B [*tenant*] of *etc.* [*or*, I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to the Landlord and

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(*a*) The Landlord and Tenant (Requisitioned Land) Act, 1942, empowers a tenant in certain circumstances to disclaim his lease where the land is requisitioned in exercise of emergency powers. In order to take advantage of the provisions of the Act the tenant has to serve certain notices. The following forms are intended to give effect to the requirements of the Act. The provisions of the Act as a whole are considered *ante*, p. 236.

The Act, beyond requiring notice to be in writing, does not specify any particular form it is to take. The provisions of the Act are somewhat similar to those of the Landlord and Tenant (War Damage) Act, 1939, and all that is required for a notice to be valid is for its meaning to be clear: *Price* v. *Mann*, [1942] 1 All E. R. 453.

The rules governing the service of all notices under the Act are contained in section 9 (1), which provides: "A notice served under this Act shall be in writing and any such notice or any copy thereof may be served either—

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or

(c) by sending it in a pre-paid registered letter addressed to that person at his usual or last known place of abode; or

(d) in a case where it is to be served on a body corporate, by delivering it to the secretary or clerk thereof at the registered or principal office thereof or sending it in a pre-paid registered letter addressed to the secretary or clerk thereof at that office; or

(e) in such other matter as the court on an application made in that behalf may direct.

"(2) Where the interest of a former landlord in the land comprised in a lease has passed to any person—

(a) service of a notice on that former landlord by a person who does not know and has no reason to believe that the interest has passed shall be treated for the purposes of this Act as service on the person to whom the interest has passed;

(b) the former landlord on receipt of any such notice, shall forthwith serve the notice on the person to whom the interest has passed, and, if he fails to do so, shall be liable to make good to any other person any damage suffered by that other person by reason of the failure.

"(3) A notice with respect to a lease shall be deemed for the purposes of this Act to have been served on the landlord if it is served on any person

Tenant (Requisitioned Land) Act 1942 section 1 HEREBY GIVE TO YOU NOTICE that I [C] disclaim[s] the lease [tenancy agreement] dated the —— day of —— 19— and made between —— of the land and dwelling-house [business premises] known as —— situate at —— as all the land comprised therein was on the —— day of —— 19— taken and is retained on behalf of His Majesty in the exercise of emergency powers (*c*) [I have [C has] not mortgaged or charged the said premises] [*or* I have [C has] by a deed of mortgage made the —— day of —— 19— between —— mortgaged the said premises in favour of D of *etc.*].

Dated the —— day of —— 19—.

(Signed) ——.

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for the time being authorised by the landlord to receive the rent payable under the lease."

(*b*) The power to serve a notice of disclaimer is conferred by section 1. The power of disclaimer is only exercisable in respect of leases expiring or determinable not later than five years from the material date, or expiring or determinable not later than one year after the end of the war: s. 11. For a tenant to be entitled to serve such a notice without first obtaining the leave of the Court four conditions must be fulfilled: (1) All the land comprised in the lease must have been requisitioned, (2) the land or the main part thereof must immediately before possession was taken have been used by the tenant or his family as his residence or for the purposes of his business; (3) the notice of disclaimer must be served within three months from the "material date", that is within three months of the passing of the Act or from the date on which the land was requisitioned, whichever was the later (s. 13); and (4) when it is served possession must still be retained in exercise of the emergency powers. Where a notice of disclaimer has been served and the Court has not decided that it is of no effect on the ground that the conditions are not fulfilled, at the expiration of one month from the service of the notice or such further period as the Court may allow the lease shall be deemed to have been surrendered as from the "material date": s. 2 (1) (2).

(*c*) The Act does not require the tenant to inform the landlord if the lease has been mortgaged, but, in view of the fact that the Court has jurisdiction under s. 2 (4) (a) on the application of a mortgagee to vest the lease in the mortgagee, it may be convenient to give the landlord this information.

II.

Notice to Mortgagee under Section 2 (5) (*d*) of Service of Notice of Disclaimer.

To A [*mortgagee*] of *etc.*

I, B [*mortgagor*] of *etc.* [*or*, I, B of *etc.* as agent for and on behalf of C [*mortgagor*] of *etc.*] pursuant to the provisions of the Landlord and Tenant (Requisitioned Land) Act 1942 section 2 (5) HEREBY GIVE TO YOU NOTICE that on the —— day of —— 19— I [C] served a notice on D of *etc.* my [his] landlord disclaiming the lease [tenancy agreement] dated the —— day of —— and made between —— of the land and dwelling-house [business premises] known as —— situate at —— of which premises you are mortgagee as possession had been taken and retained of the said premises on behalf of His Majesty in the exercise of emergency powers and I enclose a copy of the said notice of disclaimer.

Dated the —— day of —— 19—.

(Signed) ——.

(*d*) S. 2 (5) provides: "Within seven days from the service of a notice of disclaimer, the tenant shall serve upon any person having a mortgage or charge in respect of the term created by the lease disclaimed a copy of the notice of disclaimer and the name and address of the landlord, and if he fails to do so, he shall be liable to make good to any such person any damage suffered by that person by reason of the failure."

III.

Notice of Disclaimer by a Tenant Pursuant to an Order of the Court (*e*).

To A [*landlord*] of *etc.*

I, B [*tenant*] of *etc.* [*or,* I, B of *etc.* as agent for C [*tenant*] of *etc.*] pursuant to the provisions of the Landlord and Tenant (Requisitioned Land) Act 1942 and to the leave of the Court granted on the —— day of —— 19— HEREBY GIVE TO YOU NOTICE that I [C] disclaim[s] [those portions of] the land and premises known as —— situate at —— comprised in the lease [tenancy agreement] made the —— day of —— 19— between —— [as are more particularly described in the Schedule hereto] as possession of [the said portions of] the premises was on the —— day of —— 19— taken and is now retained on behalf of His Majesty in exercise of emergency powers.

Dated the —— day of —— 19—.

(Signed) ——.

THE SCHEDULE.

[*To contain a description of the disclaimed tenement.*]

(*e*) This form is intended for use in those cases where the tenant can only disclaim after he had obtained the leave of the Court to do so. A tenant is only entitled to disclaim his lease without such leave under s. 1 (1) of the Act where *all* the premises have been requisitioned and retained by the Crown. Where part only of the premises are requisitioned or part only is retained the tenant can only disclaim if he obtains the leave of the Court. An application for leave must be made within three months of the "material date": see note (*b*), *ante*, p. 402. The Court has power to grant leave to disclaim the whole when part only is taken and retained under s. 1 (4). Where land is requisitioned in stages the Court also may direct that the tenant shall be at liberty to serve a notice of disclaimer: s. 4. Where the lease is a "multiple lease", that is a lease "used or adapted for use as two or more separate tenements" (section 13 (1)), the Court has power, where part of the premises is taken and retained, to give leave to serve a notice of disclaimer in respect of the whole or in respect of one or more of the separate hereditaments comprised therein: s. 3 (3) (4). It is only in the case of a multiple lease that the Court can permit disclaimer of part of the premises. It is otherwise all or nothing.

IV.

Notice by a Landlord to the Requisitioning Authority under Section 6 (2) that the Lease has been Surrendered (*f*).

To A [*requisitioning authority*].

I, B [*landlord*] of *etc.* [*or*, I, B of *etc.* as agent for and on behalf of C of *etc.*] pursuant to the Landlord and Tenant (Requisitioned Land) Act 1942 section 6 HEREBY GIVE TO YOU NOTICE that X [*tenant*] of *etc.* has served a notice of disclaimer in respect of the premises known as —— situate at —— which premises are in your possession on behalf of His Majesty in exercise of emergency powers. Such disclaimer has operated as a surrender of the lease [tenancy agreement] under which X was tenant of the premises and I [C] require[s] you henceforth to pay all compensation in respect of the requisitioning of the premises to me [C].

Dated the —— day of —— 19—.

(Signed) ——.

(*f*) Where premises subject to a lease are requisitioned the compensation will ordinarily be paid to the tenant. The Act, s. 6 (2), provides: "Where any lease is deemed to have been surrendered by virtue of this Act, the compensation payable under paragraph (a) of subsection (1) of section two of the Compensation (Defence) Act, 1939, in respect of any period after the date on which the surrender is deemed to have taken effect shall be payable to the landlord: Provided that any payment of compensation in respect of any such period made to the person who would have been entitled thereto but for the surrender shall, unless before the payment is made notice of the surrender has been served by the landlord on the authority by whom possession of the land comprised in the lease has been taken, be deemed to have been paid to that person as the agent of the landlord, and the landlord shall be entitled to recover it from that person but shall not have any other remedy in respect thereof. The payment of compensation as aforesaid to the said person as agent of the landlord shall not be taken as implying that the landlord is bound by any agreement made between that person and the said authority as to the amount of the compensation." It is therefore necessary for the landlord to serve a notice on the requisitioning authority claiming payment to himself of the compensation immediately he receives a notice of disclaimer and he has decided not to apply to the Court under s. 1 (3) to have the notice declared to be of no effect on the ground that the conditions of the Act have not been fulfilled.

V.

Notice under Section 7 (4) by a Tenant who has Disclaimed, Requiring the Landowner to Inform Him When He Can Remove Fixtures (*g*).

To A [*landlord*] (*h*) of *etc.*

I, B [*tenant*] of *etc.* [*or*, I, B of *etc.* as agent for and on behalf of C [*tenant*] of *etc.*] pursuant to the Landlord and Tenant (Requisitioned Land) Act 1942 request you send to me [C] a notice addressed to me [C] at —— (*i*) informing me [C] when possession is given up by the requisitioning authority of the land and premises known as —— situate at —— in order that I [C] may remove the building [fixtures] which I am [C is] entitled to remove as tenant under the lease [tenancy agreement] dated the —— day of —— of the said premises.

Dated the —— day of —— 19—.

(Signed) ——.

(*g*) Where a tenant has a right as between himself and the landlord to remove any building or fixtures and the lease comes to an end (whether as a result of disclaimer under the Act or otherwise) before possession of the land so taken has been given up or within such a short period thereafter as not to give the tenant a reasonable opportunity for exercising his right, the right may be exercised within a reasonable time after such possession is given up: s. 7. Where a tenant is entitled to remove any building or fixtures, if he serves a notice requiring the person, who is entitled to occupy the land when possession is given up, to inform him of the fact, such person is bound to serve a notice giving such information when possession is in fact given up.

(*h*) The notice is under sub-s. (4) of s. 7 to be served on the person who, when the requisitioning authority gives up possession, will be entitled to occupy the land; such person will generally be the landlord.

(*i*) S. 7 (4) requires the tenant to specify the address to which the information is to be sent.

VI.

Notice by the Occupier of Land to the Former Tenant under Section 7 (4) that the Requisitioning Authority Has Given Up Possession (*j*).

To A [*former tenant*] of *etc.*

I, B [*occupier of the land*] of *etc.* [*or*, I, B of *etc.* as agent for and on behalf of C [*occupier of the land*] of *etc.*] pursuant to the Landlord and Tenant (Requisitioned Land) Act 1942 and to your request dated the —— day of —— 19— HEREBY INFORM YOU that possession was given up by the requisitioning authority on the —— day of —— 19— of the land and premises known as —— situate at —— and you may remove the building [fixtures] which you have a right to remove from the said premises within a reasonable time after the service of this notice.

Dated the —— day of —— 19—.

(Signed) ——.

(*j*) See s. 7 (4) and note (*g*), *ante*, p. 406.

VII.

Agreement between a Former Tenant and His Landlord Under Section 7 (3) for the Payment of Part of the Compensation Moneys to the Tenant on Account of Removable Fixtures (*k*).

THIS AGREEMENT is made the —— day of —— BETWEEN A [*former landlord*] of *etc.* (hereinafter called "the Landlord") of the one part and B [*former tenant*] of *etc.* (hereinafter called "the Tenant") of the other part

WHEREAS by a lease [tenancy agreement] made the —— day of —— between the Landlord of the one part and the Tenant of the other part the land and dwelling-house known as —— situate at —— was demised to the Tenant for a term of —— years from the —— day of —— at a yearly rent of ——

AND WHEREAS on the —— day of —— 19— possession was taken of the land comprised in the said lease [tenancy agreement] on behalf of His Majesty in the exercise of emergency powers

AND WHEREAS the said lease [tenancy agreement] determined on the —— day of —— 19— but the Tenant has not had a reasonable opportunity of exercising his right to remove the building [and fixtures] on the land which he is entitled to remove and the said building [and fixtures] are now being used by the authority in actual possession under such emergency powers

AND WHEREAS the Landlord is the person entitled to the compensation payable in respect of the premises under the

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(*k*) Stamp 6d. S. 7 of the Act provides for the adjustment of the rights of the landlord and tenant where the lease has determined, whether by disclaimer or otherwise, and the tenant has not had a reasonable opportunity of exercising his right to remove any building or fixtures annexed to the land. This agreement is intended to provide in accordance with sub-s. (3) of s. 7 for the payment by the person entitled to the compensation money under the Compensation (Defence) Act, 1939, of the proportion of that sum attributable to the tenant's fixtures. In default of such agreement the sum to which the tenant is entitled will be determined by the Court.

Compensation (Defence) Act 1939 section 2 (1) (a) and the Tenant has requested the Landlord to pay to him such part of the said compensation as may be attributable to the use of the said building [and fixtures] in accordance with the provisions of the Landlord and Tenant (Requisitioned Land) Act 1942

NOW IT IS HEREBY AGREED as follows:—

The sum attributable to the use of the said building and fixtures belonging to the Tenant is the sum of £*x* per annum and the Landlord will as and when he receives the compensation payable under the Compensation (Defence) Act 1939 in respect of the land pay to the Tenant the proportion of the said sum of £*x* attributable to the period for which compensation is paid.

AS WITNESS *etc.*

VIII.

Agreement between a Landlord and Tenant Under Section 8 Reducing the Rent Payable During the Period of Requisition (*l*).

THIS AGREEMENT is made the —— day of —— 19— BETWEEN A [*landlord*] of *etc.* of the one part and B [*tenant*] of *etc.* of the other part

WHEREAS by a lease [tenancy agreement] made the —— day of —— between the Landlord of the one part and the Tenant of the other part the land and premises known as —— situate at —— were demised to the Tenant from the —— day of —— for the term of —— years at the yearly rent of £*x*

(*l*) Stamp 6d. Under s. 8 of the Act where the tenant pays an inclusive rent, being relieved of the usual tenant's rates and taxes or in respect of cost of repairs or insurance or the landlord provides lighting or other services or the landlord is required to carry out any improvements which have not been completed, the rent payable under the lease in respect of the period for which possession of the land is retained in the exercise of emergency powers is to be reduced to such an amount as may be agreed between the tenant and the landlord or in default of agreement as may be determined by the Court. This provision applies to all leases, whether they are disclaimable leases or not, and whether all the demised premises is taken or only part.

and the Landlord thereby covenanted [agreed] to pay the usual tenant's rates and taxes and the cost of repairs and insurance [and to provide the heating and other services therein specified]

And whereas on the —— day of —— 19— possession was taken of the said premises and is retained in the exercise of emergency powers

And whereas the Landlord and Tenant have agreed that so long as possession is retained of the premises in exercise of such emergency powers the rent shall be reduced to the net rent in manner hereinafter appearing

Now it is hereby agreed and declared pursuant to the provisions of the Landlord and Tenant (War Damage) Act 1942 as follows:—

The yearly rent of £*x* reserved by the said lease shall as from the —— day of —— 19— and so long as possession of the premises is retained in exercise of emergency powers but no longer be abated or reduced to the yearly rent of £*y* which the parties hereto agree to be the net rent of the said premises estimated in accordance with the provisions of the said Act and such yearly rent shall be payable in respect of the premises at the like times and in the like manner as the said rent of £*x* And it is further agreed and declared that all the covenants conditions and provisions of the said lease [tenancy agreement] shall remain in force with respect to the premises with such modification only as may be rendered necessary by such reduction or abatement of the said rent as aforesaid.

In witness *etc.*

Form 23.

Form of Solicitor's Certificate as to the Title to a Proprietary Interest for the Purpose of Claiming a Value Payment under the War Damage Act, 1941.*

File number

Property

I —— of —— a Solicitor of the Supreme Court certify that from the muniments of title produced to me by (*a*) —— of —— (hereinafter called "the claimant") and from the information in my possession and from the inquiries I have made it appears:—(*b*)

1. That immediately before the occurrence of war damage to the above property (hereinafter called "the said property")

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* This and the following form appeared in the Law Society's Gazette for February, 1942, p. 16, and are republished here with the kind permission of the Council of the Law Society. The Council have had discussions with the War Damage Commission as to the procedure to be followed by claimants to value payments under Part I of the War Damage Act, 1941. These two forms have been prepared by the Council as the result of these discussions and have been approved by the Commission. The Commission has stated that as value payments have under s. 9 (2) and (4) of the War Damage Act, 1941, to be made to the owners of the proprietary interests in the properties or their mortgagees it must be satisfied as to the title of claimants to value payments. It has agreed to accept a certificate by the applicant's solicitor as proof of title.

The War Damage Act, 1941, does not permit the Commission to pay the charges of an applicant's solicitor for preparing his claim. Accordingly the charges of the solicitor for giving a certificate of title fall on the applicant. In these circumstances the Council, in order to avoid hardship, have recommended in ordinary cases the following scale:

Where the value of the proprietary interest on the 31st March, 1939, did not exceed £500	1 guinea
Where such value was between £500 and £1,500	2 guineas
Where such value was between £1,500 and £3,000	3 guineas
Where such value was over £3,000	Item charges.

Where the solicitor has to do an exceptional amount of work he can elect to be remunerated by item charges.

The following are the notes of the Council to these forms:—

(*a*) Insert full name and address of claimant.

(*b*) A solicitor giving this certificate is not expected or required to make a full and complete investigation of the claimant's title such as would be necessary upon a sale or mortgage of the property. In most cases it should prove sufficient to peruse an abstract of the claimant's title, or his land or (where the claimant is a mortgagee) charge certificate, and any lease or tenancy agreements which the claimant may produce in response to a

on the —— day of —— 19— the claimant was the owner of a proprietary interest (as defined by section 95 of the War Damage Act 1941) therein consisting of the fee simple absolute in possession [a tenancy (other than a short tenancy as defined by section 95 of the War Damage Act 1941 particulars of which tenancy are as follows (*c*):—(*d*)]

2. The muniments of title produced to me by the claimant disclose that immediately before the occurrence of the damage the said property was subject to the restrictive covenants easements quasi easements or other rights enuring for the benefit of other land public rights of way rights of common or other rights enuring for the benefit of the public or of any section thereof of which particulars are set out in the First Schedule hereto.

3. The Second Schedule hereto contains particulars of all leases underleases and tenancy agreements subsisting in respect of the said property at the date of the occurrence of war damage thereto.

4. The Third Schedule hereto contains particulars of all mortgages or other charges subsisting in respect of the said property at the date of the occurrence of war damage thereto.

5. The Fourth Schedule hereto contains particulars of requisitioning of the said property by a Government Department or Local Authority or the taking over thereof by such Department or Authority under an agreement at any time since the 24th August 1939.

Dated this —— day of ——

(Signed)

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request for production of all deeds and documents in his possession affecting his title to the property. It will not be necessary for the solicitor to make searches in H.M. Land Registry or in Local Registries, as the War Damage Commission is making its own arrangements as to these searches.

(*c*) Strike out whichever of these two alternative paragraphs is inapplicable and complete as necessary.

(*d*) Here state the date of and parties to the instrument creating the tenancy, the term granted, the date of the commencement of the term, the rent payable, whether the rent is inclusive or exclusive, who undertakes liability for repairs, and give particulars as to any special provisions, *e.g.*, a right for the landlord or tenant to determine or renew the tenancy. If the tenancy has been disclaimed under the Landlord and Tenant (War Damage) Act, 1939, or otherwise, give particulars of such disclaimer.

THE FIRST SCHEDULE.

Particulars of restrictive covenants, easements, etc.

[*Note*—If none insert the word "None"; otherwise give full particulars.]

THE SECOND SCHEDULE.

Particulars of leases, underleases and tenancy agreements.

[*Note*—If none insert the word "None"; otherwise state in relation to each lease underlease or tenancy agreement the date parties term granted date of commencement of the term rent payable whether rent inclusive or exclusive who undertakes liability for repairs and give particulars as to any special provisions *e.g.* a right for the landlord or tenant to determine or renew the lease. If the lease has been disclaimed under the Landlord and Tenant (War Damage) Act 1939 or otherwise give particulars of such disclaimer.]

THE THIRD SCHEDULE.

Particulars of mortgages, charges, etc.

[*Note*—If none insert the word "None"; otherwise state in relation to each mortgage or charge the date parties and amount secured and whether the mortgage is legal or equitable.]

THE FOURTH SCHEDULE.

Particulars of requisitioning.

[*Note*—If the property has not been requisitioned state "Property not requisitioned"; otherwise state period during which the property was under requisition the name and address of the Government Department or Local Authority which requisitioned the property and (if any) the file number of the correspondence with the Government Department or Local Authority concerned.]

Form 24.

Form of Solicitor's Certificate as to the Title of a Mortgagee of a Proprietary Interest to a Value Payment under the War Damage Act, 1941.

[*Payment to Mortgagee.*]

File number

Property

I —— of —— a Solicitor of the Supreme Court certify that from the muniments of title produced to me by (*a*) —— of —— (hereinafter called "the claimant") and from the information in my possession and from the inquiries I have made it appears:—(*b*)

1. That immediately before the occurrence of war damage to the above property (hereinafter called "the said property") on the —— day of —— 19— the claimant was the mortgagee under a mortgage as defined by section 95 of the War Damage Act 1941 (particulars of which mortgage are set out in the Schedule hereto) of a proprietary interest as defined by the said section 95 in the said property.

2. That the said proprietary interest consisted of the fee simple absolute in possession [a tenancy (other than a short tenancy as defined by section 95 of the War Damage Act 1941) particulars of which tenancy are as follows (*c*):—(*d*)]

Dated this —— day of ——

(Signed)

SCHEDULE.

Particulars of mortgage or charge.

[*Note*—State date parties amount secured and whether the mortgage is legal or equitable.]

Form 25.

Assignment under Section 46 (3) of the War Damage Act, 1941, of Value Payment or Payment Under Section 15 of the Act (*a*).

THIS ASSIGNMENT is made the —— day of —— BETWEEN —— of —— (hereinafter called "the vendor") of the one part and —— of —— (hereinafter called "the purchaser") of the other part.

WHEREAS:—

(1) On the —— day of —— the interest of the vendor in the property known as —— in the County of —— (which interest is more particularly described in the Schedule hereto) was the subject of [a contract of sale dated the —— day of —— and made between the vendor of the one part and the purchaser of the other part] (*or*) [a notice to treat dated the —— day of —— and served by —— under the —— Act —— authorising the compulsory acquisition of the said property by the said ——]

(2) On the said —— day of —— the said property sustained

(*a*) Stamp to be adjudicated 6d. if under hand, 10s. if under seal. Notice in writing of the assignment must be given to the War Damage Commission in accordance with s. 134 of the Law of Property Act, 1925. This form appeared in the Law Society's Gazette for February, 1942. p. 17, and is published with the kind permission of the Council of the Society. This form has been approved by the Commission. It has given instruction to regional managers to accept notices of assignments made in this form, to make a note of the assignment on the file relating to the property and to acknowledge receipt of the notice.

The War Damage Act, 1941, s. 46 (3) provides: "Where a hereditament sustains war damage at a time when an interest therein is the subject of a contract of sale or of a notice to treat served under an enactment authorising the compulsory acquisition thereof, any value payment in respect of the damage, or share of such a payment, or payment under s. 15 of this Act, payable to the vendor in respect of that interest, shall, unless the contract is rescinded or the notice ceases to have effect, be held by him upon trust for the purchaser: Provided that any lien upon that interest to which the vendor is entitled by virtue of the contract shall extend to that payment or share." The Commission have stated that it regards s. 46 (3) as mandatory and accordingly, in the absence of any formal assignment, will make the value payment to the vendor. However, the Commission is prepared to accept such assignments as normal. It regards the assignment as being "an assignment which does not affect any beneficial interest" in the payment within s. 9 (7) of the Act and accordingly the approval of the Commission is not necessary to its validity.

war damage as defined by section 80 of the War Damage Act 1941 (hereinafter called "the Act")

(3) In pursuance of the provisions of the War Damage (Notification and Claims) Regulations 1941 notice of the occurrence of the event which caused the said war damage was duly given to the War Damage Commission by the vendor on the —— day of —— and a claim for a [value payment] (*or*) [share of any value payment] in respect of the said war damage was duly made by the vendor on the —— day of —— the reference number relating to the said claim in the said Commission's records being ——

(4) The said [contract has not been rescinded] (*or*) [notice to treat has not ceased to have effect]

(5) By virtue of the provisions of subsection (3) of section 46 of the Act any value payment in respect of the said war damage or share of such payment or payment under section 15 of the said Act payable to the vendor in respect of his said interest would if it were paid to the vendor be held by the vendor upon trust for the purchaser

(6) It is intended that by a conveyance/assignment to bear even date with these presents and to be made between the vendor of the one part and the purchaser of the other part the interest of the vendor in the said property shall be vested in the purchaser

(7) The parties hereto have agreed that the vendor shall assign the said payment or share thereof to the purchaser to the intent that any payment when it is made shall be paid direct to the purchaser

Now the vendor in consideration of the premises hereby assigns unto the purchaser ALL THAT the value payment or share of such payment or payments under section 15 of the Act together with all interest accruing and to accrue thereon by virtue of section 8 (2) of the Act to which the vendor may be or hereafter become entitled by virtue of the Act in respect of his said interest in the said property and the full benefit and advantage thereof TO HOLD the same unto the purchaser absolutely.

AS WITNESS *etc.*

[THE SCHEDULE ABOVE REFERRED TO.]

Form 26.

War-Time Amalgamation of Two Businesses by Way of Temporary Partnership (*a*).

THIS DEED OF PARTNERSHIP is made the —— day of —— 19— BETWEEN A of *etc.* of the one part and B of *etc.* of the other part.

WHEREAS—

(1) The said A has for some years carried on a business (hereinafter called A's Business) as a —— at —— and the said B has for some years carried on a similar business (hereinafter called B's Business) at ——

(2) It has been agreed between the said A and B that the said businesses shall be amalgamated as hereinafter provided

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

1. The said A and B hereby mutually covenant with each other that they will become partners in the business of —— in the name of —— from the —— day of —— 19— for the term of —— years but subject to determination as hereinafter provided.

2. (1) Either partner may determine the partnership by six months' notice in writing to be given to the other partner at any time within one year after the end of the war

(2) The expression "end of the war" shall for the purposes of this clause mean the date declared by His Majesty by Order

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(*a*) This and the next Form were drafted by Mr. E. H. Bodkin, of Lincoln's Inn. Notwithstanding the Government recommendation to small firms to amalgamate, it appears that in most cases such a course would be financially unsound, since the loss of business would more than counterbalance the reduction in outgoings. An amalgamation may, however, be profitable to both parties where they have a personal goodwill or where for other reasons, such as shortage of similar businesses in the neighbourhood, the customers of both are likely to be retained; and it may be rendered necessary by shortage of available staff.

in Council to be the date on which the emergency that was the occasion of the passing of the Courts (Emergency Powers) Act 1939 came to an end.

3. The business of the partnership shall be carried on at —— aforesaid or at such other premises as the partners shall from time to time mutually agree upon (*b*).

4. (1) Capital accounts of the assets and liabilities of A's Business and B's Business respectively have been prepared for the purposes of this Deed made up to the said —— day of —— 19— and have been agreed by the partners and copies thereof are set out in the Schedule hereto and it appears from such accounts that the net value of the assets of A's Business (including the book debts and the goodwill but excluding the Lease of the said premises known as ——) after deducting or allowing for all liabilities whether present or prospective and making a proper allowance for debts estimated to be bad debts is the sum of £—— whereof the sum of £—— is the value of the chattels passing by delivery and the net value of the assets of B's Business (including the book debts and the goodwill and the Lease of the said premises known as ——) after making similar deductions and allowances as in the case of A's Business is the sum of £—— whereof the sum of £—— is the value of the chattels passing by delivery

(2) The assets of A's Business (other than and except the said Lease of the said premises known as ——) and the assets of B's Business shall respectively become the property of the partnership and the said debts and liabilities of A's Business and B's Business shall respectively become debts and liabilities of the

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(*b*) It is assumed in this Precedent that the business will be carried on in effect in continuation of B's business and on his premises, though under a new name, and that A's stock-in-trade will be transferred there and his premises sold. As regards A's liabilities under his lease until sale it appears reasonable that they should be assumed by the partnership, and since it will in most cases be in the interests of both partners that the lease should be sold as soon as possible B is not likely to be prejudiced by A's wish to retain them until after the war, unless, of course, the former has a specially valuable local goodwill. The provisions as to dissolution are of course intended to enable the partners to recommence their respective businesses after the war with as little interruption as possible.

partnership as if they had been incurred by the partnership but subject (as regards the liabilities of the said A under the said Lease of the said premises known as ——) to the provisions hereinafter contained

(3) The said A and B shall respectively be credited in the books of the partnership with the said sums of £—— and £—— as so much capital brought in by them respectively

(4) The chattels passing by delivery which belong to A's Business and B's Business respectively have been delivered to the partners

(5) The said B shall stand possessed of the said premises known as —— which are vested in him for the residue of a term of —— years from the —— day of —— granted by a Lease dated *etc.* at a yearly rent of £—— in trust for the partnership and shall be indemnified by the partnership against the payment of the rent reserved by and the observance and performance of the covenants on the leseee's part and the conditions therein reserved and contained.

(6) The said premises known as —— which are vested in the said A for the residue of a term of —— years from the —— day of —— granted by a Lease dated *etc.* at a yearly rent of £—— shall not belong to or be assets of the partnership but the said A shall nevertheless until the same shall be sold or underlet be indemnified by the partnership [*etc., as in last sub-clause.*]

(7) Any further capital which may be required shall (subject to any agreement to the contrary) be provided by the partners in equal shares

(8) Each partner shall be credited in the books of the partnership with interest at the rate of £—— per cent. per annum on his share of the capital for the time being and such interest shall be paid to him on the —— day of —— in every year before any division of profits is made.

5. (1) All outgoings of whatever kind and expenses and losses incurred in carrying on the said business or in any wise relating thereto (including any expenses incurred under the provisions hereinbefore contained for indemnifying the said A

and B against their respective liabilities under the said Leases) shall be charged against revenue in the profit and loss account of the partnership and any deficiency appearing from that account shall be borne by the partners in equal shares and shall be debited in their respective capital accounts accordingly

(2) The partners shall be entitled to the net profits of the business in equal shares and the net profits shall be divided between the partners immediately after the settlement of the annual general account in each year.

6. (1) The bankers of the partnership shall be —— or such other bankers as the partners shall from time to time determine and all moneys and securities belonging to the partnership except such moneys as are required for current expenses shall be paid into and deposited with the said bank

(2) All cheques bills and other writings pledging the credit or affecting the property of the firm shall be signed by the said A or B and not otherwise.

7. The partners shall be at liberty by monthly drawings or otherwise to draw out of the said business in anticipation of their respective shares of profits and to be accounted for at the next yearly division of profits the following sums namely the said A sums not exceeding £—— and the said B sums not exceeding £—— during any quarter of a year but if in any year the amount so drawn out by either partner shall on taking the general account be found to be in excess of his share of the net profits then immediately after such account shall have been taken and settled the excess so drawn out shall be refunded without interest.

8. (1) Proper books of account shall be kept by the partners and entries made therein of all such matters transactions and things as are usually entered in books of account kept by persons engaged in concerns of a similar nature. The said books of account and all letters papers and documents belonging to the firm shall be kept at the principal place of business of the partnership and each partner shall at all times have free access by himself or his agent to examine and copy the same

(2) On the —— day of —— and on every subsequent —— day of —— a general account shall be taken of the assets and

liabilities of the partnership and of all dealings and transactions of the partnership during the then preceding year (or in the case of the first of such accounts since the commencement of the partnership) and of all matters and things usually comprehended in accounts of a like nature taken by persons engaged in a like business and in taking such account a just valuation shall be made of all items requiring valuation. Such general account shall be entered in a book which shall be signed by the partners and when so signed shall be binding on them save that if any manifest error shall be found therein and signified by any partner to the other partners within —— calendar months after such signature the same shall be rectified.

9. No partner shall without the consent in writing of the other partner:

(i) Carry on or be concerned or interested directly or indirectly in the business of —— except on account and for the benefit of the partnership nor engage in or undertake any other trade business or manufacture

(ii) Become bail surety or security for any person or corporation nor do nor knowingly suffer anything whereby the property of the partnership may be seized attached or taken in execution

(iii) Assign or mortgage his share or interest in the partnership

(iv) Draw accept or sign any bill of exchange or promissory note or contract any debt on account of the partnership or employ any of the moneys or effects thereof or in any manner pledge the credit thereof except in the usual and regular course of business

(v) Buy order or contract for any real or leasehold property or for any goods or articles for the use of the firm exceeding the value of £——

(vi) Hire or except in case of gross misconduct dismiss any clerk traveller or person in the employment of the partnership or take any apprentice.

10. If in any year the annual account shall show that in the financial year to which such account relates the business has (after crediting the partners with interest on their capital as hereinbefore provided) produced no profits either partner may by giving three months' notice in writing to the other partner determine the partnership.

11. (1) If the partnership shall be dissolved whether by notice by either partner under clause 2 or 10 hereof or by the death or bankruptcy of the said A or consequent upon his suffering his share to be charged for his separate debt under the Partnership Act 1890 or is dissolved by the Court by reason of his lunacy incapacity or misconduct the said B shall have the option to be exercised within three months of such dissolution by notice in writing to the said A or his representatives of purchasing the share of the said A in the assets of the partnership (including the capital and goodwill) as from the date of such dissolution PROVIDED THAT in the event of the partnership being dissolved by notice and the said B not exercising the option hereinbefore conferred on him within the time hereinbefore fixed the said A shall have the option to be exercised in like manner and within three months of the expiration of the said option of the said B of purchasing the share of the said B upon the like terms and conditions

(2) If the partnership shall be dissolved by the death or bankruptcy of the said B or consequent upon his suffering his share to be charged for his separate debt under the Partnership Act 1890 or shall be dissolved by the Court by reason of his lunacy incapacity or misconduct the said A shall have the option to be exercised within three months of such dissolution by notice in writing to the said B or his representatives of purchasing the share of the said B in like manner and upon the same terms and conditions

(3) The purchase-money for the share of a partner whose share is purchased under any of the options hereinbefore contained shall be the amount of such share in the capital of the partnership as shown in his capital account with the partnership made up if the partnership shall have been continued for a year

or more to the only or last day for taking the annual general account up to which the same shall have been continued together with interest in lieu of profits at the rate of £—— per cent. per annum up to the date of the dissolution for any period of less than a year not covered by such capital account but subject to the deduction of all sums drawn by the outgoing partner on account of profits during the then current year of the partnership (*c*)

(4) The outgoing partner or his representatives shall be bound by the general account from which such capital account shall be made up as aforesaid

(5) The purchase-money shall be payable as to so much thereof as shall represent profits upon the exercise of the said option and as to so much thereof as shall represent capital by —— equal instalments at intervals of —— calendar months (the first to be paid at the expiration of —— calendar months from the date of the dissolution) with interest at the rate of £—— per cent. per annum on the amount thereof for the time being unpaid

(6) The partner exercising the option shall secure the payment of the purchase-money to the outgoing partner or his representatives by deed of covenant and shall indemnify the outgoing partner or his estate from all liabilities of the partnership

(7) The outgoing partner or his representatives shall do all such acts and execute all such assurances as may be necessary for vesting in the partner exercising the option the assets (including the goodwill) and property of the partnership at the date of the dissolution.

12. Subject to the provisions hereinbefore contained the partnership shall on dissolution be wound up as provided by the Partnership Act 1890.

13. The said A and B shall respectively be entitled on the dissolution by any means of the partnership to use the firm

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(*c*) It is often fairer to provide for the value of the share to be ascertained under the Arbitration Clause.

name of A's Business and B's Business respectively and (unless the same shall be wound up under clause 12 hereof) to solicit any customer of the partnership who was formerly a customer of A's Business or B's Business respectively but shall not be entitled to solicit any other customer of the partnership (*d*).

14. Any notice hereby authorised or required to be given to the partners or either of them shall be sufficiently given by leaving the same addressed to them or him at the principal place of business of the partnership.

15. If during the continuance of the partnership or at any time afterwards any dispute difference or question shall arise between the partners or their or any of their representatives touching the partnership or the accounts or transactions thereof or the dissolution or winding-up thereof or the construction meaning or effect of this deed or anything herein contained or the rights and liabilities of the partners or their representatives under this deed or otherwise in relation to the premises then every such dispute difference or question shall be referred to two arbitrators one to be appointed by each party or their umpire pursuant to the Arbitration Acts 1889—1934 or any statutory modification or re-enactment thereof for the time being in force.

In witness *etc.*

The Schedule above referred to.

[*This will contain capital accounts of A's and B's Businesses.*]

(*d*) It is assumed that A's and B's businesses were near enough to compete with each other. If not, a covenant by an outgoing partner not to set up a rival business may be substituted.

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